BANK COPY

143

Sam

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 647

FIRST BANK STOCK CORPORATION, APPELLANT,

vs.

STATE OF MINNESOTA

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

FILED JANUARY 12, 1937.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 647

FIRST BANK STOCK CORPORATION, APPELLANT,

vs.

STATE OF MINNESOTA

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

INDEX.

	Page
Record from District Court of Hennepin County	1
Answer	1
Stipulation concerning facts	15
Exhibit "A"—List of money and credits filed with assessor	29
Exhibit "B"—State laws imposing ad valorem taxes on shares of stock regardless of residence	33
Exhibit "C"—States which impose ad valorem taxes on shares of stock in foreign State banks owned by residents	60
Exhibit "D"—Service contract between First Service Corp. and First Bank Stock Corp.	68
Exhibit "E"—Service contract between First Service Corp. and each member bank	72
Exhibit "F"—Section 2 of Certificate of Incorporation of First Service Corp.	75
Findings of fact, conclusions of law and order for judgment	78
Stipulation for settled case	95
Order settling case	96
Notice of motion for amendment of findings and conclusions or for a new trial	96
Order denying motion for amendment of findings and conclusions, etc.	101
Notice of appeal	102

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 8, 1937.

—8694-C

	Original	Print
Proceedings in Supreme Court of Minnesota	103	103
Assignments of error	103	103
Opinion, Stone, J.	106	105
Opinion, Stone, J., on petition for rehearing	121	117
Judgment	123	119
Mandate	124	119
Petition for appeal	125	120
Assignments of error	131	122
Order allowing appeal	134	124
Bond on appeal (omitted in printing)	135	
Citation and service (omitted in printing)	137	
Praecipe for transcript of record (omitted in printing)	141	
Clerk's certificate (omitted in printing)	143	
Statement of points to be relied upon and designation as to printing record	144	125

State of Minnesota.

In Supreme Court.

1935.

STATE OF MINNESOTA, DISTRICT COURT,
County of Hennepin. Fourth Judicial District.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEYS AND CREDITS TAXES FOR 1934.

STATE OF MINNESOTA,

Plaintiff,

vs.

FIRST BANK STOCK CORPORATION,

Defendant.

ANSWER.

Comes now First Bank Stock Corporation and for its answer in the above matter, alleges:

I.

First Bank Stock Corporation is a corporation organized under the laws of the State of Delaware, the principal place of business of which is Wilmington, Delaware, and at all times here material was and is domiciled in the State of Delaware and

not elsewhere. It was, during all of the times herein alleged, and now is, duly qualified to do business in Minnesota.

II.

On May 1, 1934, First Bank Corporation owned all of the shares (hereinafter referred to as state bank shares), except directors' qualifying shares, of the capital stock of certain state banking corporations organized and incorporated under the laws of Montana and North Dakota, to-wit:

Powder River County Bank, Broadus, Montana.
Metals Bank & Trust Company, Butte, Montana.
Chouteau County Bank, Fort Benton, Montana.
Forsyth State Bank, Forsyth, Montana.
Montana State Bank, Philipsburgh, Montana.
The First State Bank, Shelby, Montana.
The Northwestern Bank of Langdon, Langdon, N. D.
Benson County State Bank, Minnewaukan, N. D.

The property of said banks was not assessed or taxed in Minnesota for 1934 and none of said banks owned property situated therein in said year. Certificates representing the shares of the state banks were held by defendant for safekeeping during 1934 and on May 1, 1934, at its office in the city of Minneapolis, Hennepin County, Minnesota. The true and full value on May 1, 1934, of the state bank shares was one million twenty-seven thousand ninety-five and 95/100 dollars ($1,027,095.95).

III.

Pursuant to Sections 2337 to 2349, both inclu-

sive, Mason's Minnesota Statutes, 1927, and on or about June 8, 1934, defendant duly filed with the city assessor of Minneapolis, Hennepin County, Minnesota, a list of its money and credits owned by it on May 1, 1934, showing therein an aggregate amount of taxable money and credits of two million forty thousand six hundred thirty-four and 05/100 dollars ($2,040,634.05). Thereafter and on or about August 3, 1934, said city assessor arbitrarily increased the amount of defendant's taxable money and credits aforesaid by adding thereto the true and full value aforesaid of said state bank shares. Assuming to act, as defendant is informed and believes and therefore alleges the fact to be, under and pursuant to said Sections 2337 to 2349, Mason's Minnesota Statutes, 1927, said city assessor thereby and thereafter threatened to subject said state bank shares to the annual tax of three (3) mills on each dollar of the true and full value thereof imposed by said Section 2337, Mason's Minnesota Statutes, 1927. Thereafter, a tax computed under said Section 2337 of nine thousand two hundred three and 19/100 dollars ($9,203.19) was levied and assessed against defendant, of which three thousand eighty-one and 29/100 dollars ($3,081.29) was on the true and full value aforesaid of said state bank shares and for and on account of the ownership thereof by defendant on May 1, 1934. Said tax of nine thousand two hundred three and 19/100 dollars ($9,203.19) has not been paid and became delinquent on March 1, 1935, and is now delinquent.

IV.

10 Said state bank shares were duly assessed and taxed for 1934, the shares of Montana banks being assessed and taxed in Montana and the shares of North Dakota banks being assessed and taxed in North Dakota, pursuant to statute there. The taxes in respect of said shares levied and assessed in Montana and North Dakota have been paid.

V.

By Chapter 64, Laws of Montana, 1927, it is provided as follows:

11 "Chapter 64.

"An Act to Amend Section 2067 of the Revised Codes of Montana of 1921, Relating to the Assessment and Taxation of State Banks, Banking Corporations and Private Bankers and of Shares of Stock in such State Banks or Banking Corporations and Providing for the Furnishing of Certain Information to County Officials by Bank Officials.

12 "Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. That Section 2067 of the Revised Codes of Montana of 1921, be, and the same is hereby amended so as to read as follows:

" 'Section 2067. Every State bank or banking corporation located and doing business in this State, and every private banker doing business in this State, shall be taxable upon the value of all real estate and personal prop-

erty owned by such bank, banking corporation or private banker, and also upon the 13
moneyed capital employed in such business, such moneyed capital to be ascertained as provided by Section 1999 of the Revised Codes of Montana of 1921, and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities 14
of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the 15
real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessments, adopt the figures disclosed by any prior report made by such bank, banking cor-

poration or private banker to any State or
16 Federal officer pursuant to any State or Federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

"All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is
17 assessable and taxable to such bank or banking corporation in this State, and shall be taxable to the owners of such shares in the county, school district, city, town, or placed where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place. The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon
18 his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation.

For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.'

"Section 2. This Act shall be in full force and effect from and after March 1, 1927.

Approved March 8, 1927."

By Section 2115, Supplement to the 1913 Compiled Laws of North Dakota, it is provided as follows:

"Sec. 2115. (1) Bank and trust company stock; where and at what valuation to be listed. The shares of stock of every bank and of every loan and trust company located in this

state whether organized under the laws of this state or the United States or of any other state or country shall be assessed to the individual stockholders or owners thereof at the place where the bank or loan and trust company is located and not elsewhere. Such shares shall be listed and assessed to the owner thereof with reference to their value on the first day of April of each year and shall be taxed at the same rate as other property in the same taxing district is taxed.

"(2) Determination of the value of shares of capital stock. On or before the first day of May in each year, the officers of each bank or loan and trust company located in this state shall file a statement with the state tax commissioner and with the county auditor of the county where located, verified by oath, showing the amount and number of shares of capital stock of such bank, loan and trust company, the names and residences of the several stockholders and the amount owned by each; the amount of the corporation's surplus or reserve fund and undivided profits as of April 1st preceding. The value of each share of stock in each bank, loan and trust company, except such as are in liquidation, shall be taken to be the par value thereof, together with its pro rata share of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation, shall be taken to be its pro rata

share of the actual value of the assets of such bank, or loan and trust company.

"(3) Deduction of real estate and personal property to arrive at taxable value of shares of stock. Real estate owned by any bank or loan and trust company shall be assessed and taxed as other real estate is under this article. Personal property of any bank, loan and trust company, except furniture, fixtures and equipment, shall be returned in the name of the bank or trust company, and shall be assessed and taxed as other personal property is under this article. In determining the taxable value of the shares of stock of such corporation, the tax commissioner shall deduct the net amount of such corporation's investment in real estate and the net amount of its investment in taxed personal property from the aggregate amount of the capital stock, surplus and undivided profits, and the remainder shall be taken as the basis for valuation of such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value, or such other provision of law as may be enacted at this or subsequent sessions of the legislature classifying such property for assessment purposes.

"To determine the amount which shall be considered as being invested in real estate, the tax commissioner shall deduct from the total of such investment the amount of investments in real estate where the bank or loan and trust

company has sold the real estate under contract whereby the purchaser agrees to pay the taxes assessed against such property.

"(4) Computation of value. The tax commissioner shall compute the total net taxable value of the capital stock of each bank or loan and trust company and shall assess such shares of capital stock and shall on or before the first business day in July of each year certify such assessment to the county auditor of the county where such bank or loan and trust company is located.

"(5) Computation of net taxable value. The county auditor shall compute the net taxable value of each share of stock in any bank or loan and trust company and shall multiply such value by the number of shares held by each individual stockholder and enter such assessment against the individual stockholder; provided that any solvent bank or loan and trust company may, upon written request of its cashier or other officer, have the amount of the assessment herein provided for against its stockholders assessed against the bank or loan and trust company in its corporate name and the taxes thereon may be paid as other expenses of the bank or loan and trust company are paid. The shares of capital stock in banks or loan and trust companies, not located in this state, but owned in this state, shall not be required to be listed under this article.

"(6) Assessing all moneyed capital. All moneyed capital within the meaning of section fifty-two hundred nineteen (5219) of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, national bank, loan and trust company stock is taxed in the same taxing district, and at the actual value of the moneyed capital so invested or at such percentage of actual value as may be provided by law for assessment of bank, loan or trust company stock with similar deductions for investments in real estate and taxed personal property as are allowed by this act in arriving at the net taxable value of bank stock. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized, sworn statement showing the amount of moneyed capital so used.

"(7) Refusal to furnish list of stockholders; penalty. A refusal to furnish the tax commissioner or the county auditor with the list of stockholders and the information required under this act shall be deemed a misdemeanor and any bank or loan and trust company or any officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

By Sections 2116 and 2117, Compiled Laws of

North Dakota, 1913, it is provided as follows:

"Sec. 2116. Bank to keep and furnish list of stockholders. In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office.

"Sec. 2117. Taxes on bank stock to be a lien on dividends. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any such bank who shall pay over or authorize

the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale." 37

That since the passage and approval of said laws and during all of 1934 the same have been and now are in full force in said states. 38

VI.

First Bank Stock Corporation was organized to acquire all or part of the shares of national and state banking corporations in the Ninth Federal Reserve District and to own and hold them as investments. It acquired said state bank shares pursuant to said purpose. It continuously held them as an investment and not otherwise. It never employed said state bank shares in any business transaction in Minnesota. It never traded in said shares. It did not engage in the management of said state banks. It never intended and did not intend during 1934 that said state bank shares should acquire a situs in Minnesota. Said state bank shares never acquired a situs in Minnesota, and on May 1, 1934, did not have a situs in Minnesota. 39

VII.

Sections 2337 to 2349, both inclusive, Mason's Minnesota Statutes, 1927, if they impose a tax on defendant in respect of its ownership on May 1, 1934, of said state bank shares, impose a tax on the property of defendant situated without the State of Minnesota and are void because taking defendant's property without due process of law in violation of Article I, Section 7 of the Constitution of Minnesota and the Fourteenth Amendment to the Constitution of the United States, because denying to defendant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and because imposing a tax which is not uniform upon the same class of subjects in violation of Article IX, Section 1, of the Constitution of Minnesota.

Wherefore, defendant prays judgment that the tax in the amount of nine thousand two hundred three and 19/100 dollars ($9,203.19), levied, assessed, and extended against defendant as its money and credits tax liability for the year 1934 be abated in the amount of three thousand eighty-one and 29/100 dollars ($3,081.29) and that all interest, penalties and costs be abated, and the defendant recover its costs and disbursements herein.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Defendant,
1300 First National-Soo Line Building,
Minneapolis, Minnesota.

(Duly Verified.)

(Title of Cause.)

43

STIPULATION CONCERNING FACTS.

For the purpose of expediting the trial of the above entitled action, the parties hereto by their respective attorneys do hereby stipulate as follows:

I.

The facts hereinafter in this stipulation set forth are true and correct and this stipulation may be offered and received in evidence as proof of such facts, subject, however, to the objection of either party hereto to the admission in evidence of any 44
or all of such facts on the ground that the same are immaterial or irrelevant, but objection shall not be made to any of said facts on any other ground. Either party hereto may offer such evidence as it may deem advisable in addition to said facts so stipulated.

II.

Said facts hereby stipulated are as follows:

1. Defendant is a corporation organized and existing under the laws of the State of Delaware 45
and was, during all of the times herein mentioned, and now is, duly qualified to transact business in the State of Minnesota.

2. The allegations of paragraphs II and V of the defendant's answer in the above entitled action are true and correct.

3. Pursuant to Sections 2337 to 2379, both inclusive, Mason's Minnesota Statutes, 1927, and on or about June 8, 1934, defendant duly file th

46 the city assessor of Minneapolis, Hennepin County, Minnesota, a list of its moneys and credits owned by it on May 1, 1934, a copy of which is attached hereto and marked Exhibit A and hereby made a part hereof. Said return showed an aggregate amount of taxable money and credits of two million forty thousand six hundred thirty-four and 05/100 dollars ($2,040,634.05), which did not include the value of the state bank shares. Thereafter, and on or about August 3, 1934, said city assessor, without the consent of defendant, in-
47 creased the amount of defendant's taxable money and credits aforesaid by adding thereto the true and full value aforesaid of said state bank shares. Assuming to act under and pursuant to said Sections 2337 to 2349, said city assessor thereby and thereafter threatened to subject the defendant on account of the ownership of said state bank shares to the annual tax of three (3) mills on each dollar of the true and full value thereof imposed by said Section 2337. Thereafter, a tax computed under
48 said Section 2337 of nine thousand two hundred three and 19/100 dollars ($9,203.19) was levied and assessed against defendant, of which three thousand eighty-one and 29/100 dollars ($3,081.29) was on the true and full value aforesaid of said state bank shares and for and on account of the ownership thereof by defendant on May 1, 1934. Said tax of nine thousand two hundred three and 19/100 dollars ($9,203.19) has not been paid and became delinquent on March 1, 1935, and is now delinquent.

4. Said state bank shares were assessed and taxed for the year 1934, the shares of Montana banks being assessed and taxed in Montana and the shares of North Dakota banks being assessed and taxed in North Dakota pursuant to statutes of said states. The taxes in respect of said shares levied and assessed in Montana and North Dakota have been paid and the amount of such taxes with reference to each of said state banks are as follows: 49

Name of Bank	Amount of Tax Assessed and Paid
Powder River County Bank, Broadus, Montana	$ 683.90
Metals Bank & Trust Company, Butte, Montana	25,432.07
Chouteau County Bank, Fort Benton, Montana	1,917.82
Forsyth State Bank, Forsyth, Montana	710.17
Montana State Bank, Philipsburgh, Montana	811.12
The First State Bank, Shelby, Montana	1,192.58
The Northwestern Bank of Langdon, Langdon, N. D.	159.72
Benson County State Bank, Minnewaukan, N. D.	309.30

50

51

The defendant received no dividends during the year 1934 upon the stocks of any of the above named banks.

5. The laws of the states named in Exhibits B and C, attached hereto and hereby made a part

52 hereof, respecting the ad valorem taxation of shares of state banks, are as summarily set forth therein.

6. (a) In April, 1929, the First National Bank in Minneapolis and the First National Bank of St. Paul caused a corporation to be organized under the laws of the State of Delaware with the name of First Bank Stock Investment Company, which obtained a license to transact business in Minnesota on April 19, 1929. Stock of this corporation was issued in equal portions to and owned by First
53 Minneapolis Company and First Saint Paul Company, the stock of each of which latter corporations was owned by trustees for the benefit of the persons who were stockholders in said banks, respectively. First Bank Stock Investment Company during the summer of 1929 acquired for cash a majority of the stock of some seventeen national and state banks located in the Ninth Federal Reserve District. In August, 1929, the corporate name of the corporation was changed to First Bank Stock Corporation and it made an offer of its stock to
54 the stockholders of the First National Bank in Minneapolis, the First National Bank of St. Paul, Metals Bank & Trust Company of Butte, Montana, First National Bank of Great Falls, Montana, and Western National Bank, Missoula, Montana, in exchange for the stock of said banks held by them, which offer was accepted and the exchange consummated on October 31, 1929.

(b) In June, 1929, First Bank Stock Ipvestment Company established an executive office in the

First National-Soo Line Building, Minneapolis, 55
Minnesota, and such executive office has been continued in said building to the present time. In June, 1929, the Investment Company purchased furniture and fixtures and suitable equipment for its office which remained the property of said corporation until January 26, 1932, as of which date said furniture and fixtures and equipment was transferred to First Service Corporation, hereinafter mentioned, and during said period of time First Bank Stock Corporation paid rent for the space occupied by its executive office. During the 56
fall of 1929 and the year 1930, defendant acquired the stock of approximately one hundred ten (110) banks, trust companies, and other financial institutions, all located in the Ninth Federal Reserve District, and in the year 1931 the stock of seventeen (17) banks was acquired. Since 1931 the defendant has not acquired stock in any additional banks. Negotiations for the acquisition of such stocks were carried on in the State of Minnesota and elsewhere and examinations of all such banks 57
were made by or on behalf of First Bank Stock Corporation. The stocks of such banks and other institutions were acquired in one of two ways, either (1) for cash or by exchange of shares of First Bank Stock Corporation for such shares, or (2) in a number of instances by the organization of a new banking institution which assumed the liabilities and took over the assets of existing banks, and in a few instances by the organization of a new bank which had no connection with any exist-

58 ing banking institution. In a majority of such instances, all of the stock of such banks or financial institutions was acquired, but in some instances the shares acquired were less than all of the outstanding stocks. Upon acquiring shares in such banks, First Bank Stock Corporation in most instances sold qualifying shares to directors and entered into option agreements with such directors, pursuant to which defendant had the option at any time to repurchase such shares at cost and the director likewise had the option at any time to
59 require defendant to repurchase from him such qualifying shares at the cost thereof to him.

(c) About the beginning of the year 1930, the defendant found that, in order to preserve the value of its interest in the stock of such banks and institutions, it would be necessary for it to organize a department for the examination of such banks and for the giving of advice to such banks in respect to their operations. This was accordingly done and since such time and until December 31, 1931, First
60 Bank Stock Corporation by its employes periodically examined and audited the banks in which it held stock, received reports of the operations of such banks, and advised such banks with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, and at times furnished them with advertising material, and in a number of instances acted as the agent of such banks in the purchase and sale of securities and commercial paper.

(d) At all times to and including the present time, all meetings of stockholders, directors, and of the executive committee of the board of directors of the defendant have been held in Minneapolis or St. Paul, Minnesota. At all times material the policies of defendant were formulated and its activities directed by its board of directors pursuant to the powers with which it is invested by defendant's charter granted by the State of Delaware. Defendant's corporate seal was at all times material kept in its Minneapolis office. 61

(e) Shortly prior to January 1, 1932, the defendant caused to be organized under the laws of Minnesota a corporation with the name of First Service Corporation, all of the stock of which was and is owned by the defendant, and on January 1, 1932, the defendant entered into a contract with First Service Corporation in the form attached hereto, marked Exhibit D, and hereby made a part hereof, and since said date said contract has been continuously in effect. At the same time First Service Corporation entered into contracts with the various banks in which First Bank Stock Corporation owned stock (except one bank in which the defendant does not own a majority of the stock), and such contracts have been continuously in force ever since. Such contracts were in the form attached hereto, marked Exhibit E, and hereby made a part hereof. At all times material the principal office of First Service Corporation has been in Minneapolis, Minnesota. After January 1, 1932, all of the matters above set forth in subparagraph 62 63

64 6 (c) hereof have been done and performed by First Service Corporation, and since January 1, 1932, the only activities of the defendant have been the holding of meetings of stockholders, directors and executive committee, the receipt of interest and dividends, the disbursement of dividends to its own stockholders, the making of recommendations to member banks with reference to the payment of dividends, and the giving of proxies to vote the stock owned by the defendant at stockholders' meetings of member banks. Due to con-
65 solidations and eliminations, the number of banks in which the defendant holds stock at the present time has been reduced to eighty-four (84), including one trust company, which, as above stated, are all located in the States of Montana, North Dakota, South Dakota, Minnesota and Michigan, and within the Ninth Federal Reserve District. Approximately forty-three (43) of such banks are located in Minnesota.

(f) At the present time the defendant owns
66 certain notes receivable, all of which were obtained by it in connection with the acquisition of stocks owned by it or were purchased from banks in which defendant held stock. Defendant owns and holds certificates of deposit issued by certain member banks and as required by the Banking Act of 1933, holds certain United States Government and other bonds. The defendant holds cash which is on deposit in its accounts in two Minnesota banks and owns certain real estate which it obtained by reason of the liquidation of banks in which it formerly

held stock. The defendant at the present time owns 67
the stock of only two non-banking corporations, viz., First Service Corporation, above mentioned, and First Minneapolis Company, a Minnesota corporation, whose principal activity is the liquidation of real estate acquired and later charged off by First National Bank in Minneapolis. First Minneapolis Company is also engaged, however, in the servicing of real estate held by member banks in trust for others, and in some instances for the servicing of real estate held by individuals.

(g) At the present time, and since January 1, 68
1932, the defendant does not owe any money and it does not buy and sell securities except in connection with the investment of its own funds. None of the stock owned by defendant has ever been pledged or hypothecated in any manner. Since May, 1934, defendant has sold to persons in no way connected with the defendant all of the capital stock of First State Bank of Shelby, Montana. The defendant does not and has not at any time engaged in the business of trading in securities. 69

(h) At the present time the defendant pays no rent and owns no furniture or fixtures or tangible assets of any character except real estate taken as above described upon the liquidation of member banks. The furniture and fixtures in the office now occupied by the defendant are owned by First Service Corporation and it pays the rent for such office.

(i) In 1931 and thereafter the defendant

70 contributed approximately eight million dollars ($8,000,000) to the capital of its various member banks.

(j) The defendant keeps a complete set of books in which it records all of its transactions which are entirely separate from the books of any other corporation and which are kept at its office in Minneapolis, Minnesota. Banks in Minneapolis and St. Paul, Minnesota, act as the transfer agent and registrar of the stock of the defendant and checks in payment of dividends to the stockholders of
71 the defendant are prepared by such banks and are mailed to the stockholders by the defendant. Such dividends on the stock of the defendant during the past year have been paid semi-annually and prior to said time were payable quarterly.

(k) The books of account of the defendant are kept by employes of First Service Corporation. The defendant since January 1, 1932, has had no employes other than its officers and the total annual salaries paid to its officers does not exceed twelve
72 thousand dollars ($12,000). Compensation to First Service Corporation for its accounting and other minor services is included in the compensation paid by the defendant to First Service Corporation pursuant to Exhibit D.

(l) Attached hereto and marked Exhibit F and hereby made a part hereof is an extract from the certificate of incorporation of First Service Corporation.

Since January 1, 1932, the following activities

have been conducted by First Service Corporation alone pursuant to the contract of January 1, 1932 (Exhibit D), and none of such matters since said date have been conducted by defendant. 73

(m) First Service Corporation makes periodic examinations of the various banks, except banks located in St. Paul and Minneapolis, Minnesota. Such examinations are made one or more times a year and include an appraisal of assets and a complete audit. Its examiners report to First Service Corporation and, wherever poor or doubtful paper is reported, First Service Corporation takes up such 74
questions direct with the bank concerned and makes recommendations in connection with such paper but does not give directions. At times it criticizes lines of credit granted by member banks and at times recommends reduction in lines of credit or loans, but such recommendations have not always been complied with. It occasionally makes recommendations as to loans contemplated by member banks but never requests any bank to make a loan. Daily reports of the larger loans made the previous 75
day, together with a statement of the borrower and a description of the collateral, are sent to First Service Corporation by the country member banks but such reports are not made by any of the St. Paul and Minneapolis, Minnesota, banks which First Service Corporation does not examine.

(n) First Service Corporation acts as the agent of certain banks in the handling and collection of charged off assets of such banks and did employ a collection attorney in connection with such charged

76 off assets, but First Service Corporation acts merely as agent of the banks to make such collections and the proceeds in each instance are delivered to the banks owning such items.

(o) First Service Corporation aids member banks in the organization of suitable credit departments and acts as the member banks' agent for the purchase and sale of bonds, securities and commercial paper. It makes recommendations with reference to selling and buying securities and furnishes statistical information concerning them. Se-
77 curities are bought and sold by member banks only upon the approval of their respective boards of directors, but the majority of such sales and purchases are also approved by First Service Corporation. The Twin City member banks act independently in the handling of their investments and securities but have the benefit of the statistical division of First Service Corporation. First Service Corporation keeps a list of all securities belonging to all member banks because it is furnishing them
78 with an investment service as above described and attempts to keep informed, give advice and make recommendations concerning such securities. First Service Corporation does not place any limit on the amount of securities purchased by a member bank but it does keep a record of them. First Service Corporation does not give orders or directions with respect to securities, but merely makes recommendations. It has never attempted to require any member bank to buy any specific or designated bond or bonds, and the officers and directors of

each bank in the final analysis determine what bonds are to be purchased or sold. 79

(p) First Service Corporation has built up credit files relating to firms and institutions which issue and sell commercial paper and advises member banks with reference to buying such paper but this advice is not always followed. It makes no recommendation as to the amount of commercial paper which a member bank should carry, but does offer advice as to what line of credit should be granted individuals.

(q) First Service Corporation does a certain 80
amount of planning of advertising for member banks. It makes suggestions as to interest rates to be charged by member banks but only a small proportion of the member banks have accepted such recommendations. First Service Corporation has recommended to member banks that they adopt float or service charges. It has never attempted to insist that member banks establish such charges but has repeatedly urged it. In a great many instances the recommendation has been rejected by 81
member banks.

(r) Loans made by member banks are reported to First Service Corporation only after they are made, except that in a very few instances in cases of large loans officers of member banks have consulted First Service Corporation as to whether such loans constitute the type of credit approved by it and have asked for the recommendation of First Service Corporation with respect thereto, but such practice is very rare.

82 7. The statutes and laws of the United States and of the various states of the United States, and particularly the laws and statutes of Montana, North Dakota and Minnesota, prohibit state and national banks from having an office outside the state of incorporation or of its principal office, subject such banks to regulation by the terms of the pertinent statutes and by a state department of banking and by the comptroller of the currency, in the case of national banks, and require and provide for frequent periodical examinations
83 of such banks. Such state and national banks cannot transact business outside of the state of incorporation and generally are not permitted to qualify to transact business in other states.

The business of banking is of a highly specialized character. It serves all business institutions and most individuals. The insolvency of a bank has more far-reaching and disastrous effect upon the members of the community in which it is located than the insolvency of almost any ordinary com-
84 mercial corporation. Substantially all of the deposits of the banks involved are from local sources and substantially all of their loans are made to local persons.

Dated June 4, 1935.

FRANK J. WILLIAMS,
Attorney for Plaintiff.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for Defendant.

EXHIBIT A.

If You Neglect To Make A Return The Assessor Must Add 50 Per Cent

The tax upon money and credits amounts to 3 mills upon each dollar, or 30 cents upon each $100 of valuation. It is so light that every taxpayer can afford to be honest and make a true and full list of all money and credits owned by him or under his control.

Minnesota municipal bonds issued since April 18, 1911, real estate mortgages upon which a registry tax has been paid in Minnesota, and moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks are not to be included in this list.

Debts cannot be deducted from credits.

Please read the law on the reverse side of this blank.

List of Money and Credits

Owned by First Bank Stock Corporation of the City of Minneapolis,

Address Minneapolis, Minnesota, County of Hennepin,

State of Minnesota, on May 1st, 1934, as required by Sections 2337-2349, Mason's Minnesota Statutes of 1923.

	ITEMS	Owner's Valuation Dollars	Cents
88	1. Money subject to check and on deposit in banks, trust companies, or similar financial institutions, wherever situate.....	$ 154,342	18
	2. Money on deposit in banks, trust companies, postal and other savings banks, credit unions, or similar financial institutions, wherever the same are situate, and which is represented by certificates of deposit,		
89	cashiers' checks, or similar instruments	$1,525,500	00
	• • • • • • •		
	4. Promissory notes, bill of exchange, due bills, cream checks, and similar evidences of indebtedness	$ 353,424	62
	5. Bonds, except United States bonds and bonds issued by the State of Minnesota or any municipality thereof and such		
90	as are secured by real estate mortgages on which the mortgage registry tax has been paid in this state.....	$ 5,775	00
	• • • • • • •		
	10. Book accounts	$ 1,592	25
	• • • • • • •		
	Total	$2,040,634	05

State of Minnesota,
County of Hennepin. 91

I do solemnly swear that the foregoing list of money and credits owned by me or under my control subject to taxation for the year 1934, and the true and full value thereof as specified in the column headed "Owner's Valuation" is true and correct to the best of my knowledge and belief.

First Bank Stock Corporation
By A. E. Wilson

Subscribed and sworn to before me this 8th day 92
of June, A. D. 1934.

J. A. Hegerle

Assessor's Office
Telephone: Main 7341
235 City Hall—Minneapolis, Minn.
Edward S. Gould, City Assessor

Information to be furnished with return money and credits for taxation in the spaces below.

As a supplement to your return of money and 93
credits, it will be necessary to make an itemized listing of your stocks and bonds.

This office will make a separation of taxable and non-taxable investments when checked against your return on Form 22.

The information herein requested will be strictly confidential in accordance with the law.

Stocks

94 Stocks of affiliated companies

Stocks owned in corporations located in 9th Federal Reserve District, having no taxable situs in Minnesota and/or the property of which is assessed and taxed in Minnesota.

Bonds

Name of Investment	Par Value of Bonds	Value May 1st
Appalachian Gas Corpn 6-45..	20,000.	800.00
95 Pearl River Valley Lbr. Co. 6'.	5,000.	1,350.00
Carlos N. Boynton Land Co. 6-37	10,000.	–0–
Consol. Paper Corpn. 5½-61...	10,000.	2,200.00
Garrett Biblical Institute 5-¾.	9,500.	1,425.00
		$5,775.00

(If additional space is needed please attach separate sheet.)

96 First Bank Stock Corporation
Signed by A. E. Wilson, Secy-Treas.
Address Minneapolis, Minnesota

EXHIBIT B.

97

State Laws Imposing Ad Valorem Taxes On Shares Of Stock In Local State Banks Regardless Of Whether Or Not The Owner Resides In The State.

There are ten states which do not impose ad valorem taxes on bank shares:

Alabama
California
Idaho
Massachusetts
New York
Oklahoma
Utah
Vermont
Washington
Wisconsin

98

The statutes of Oregon still contain specific provisions relating to the taxation of bank shares which fall in class 4 below. Oregon Code, 1930, Section 69-2[illegible]2, et seq. However, Oregon now imposes an excise tax on all banks and such tax is "in lieu of all other taxes on the corporations herein mentioned" except real estate (Vol. III, Oregon Code, 1930, Section 69-1305). The Committee of Taxation of the National Bankers' Association reports that bank shares are not taxed as property (A Survey of Bank Taxation in the United States, Fifth Edition, January 2, 1935). Therefore, Oregon can be placed in the above list.

99

The tax provisions in Florida, New Hampshire,

100 and Rhode Island are somewhat peculiar, although as a practical matter it would not be very inaccurate to classify them with the remaining states.

The remaining thirty-four states levy an ad valorem tax on shares in local state banks, and such tax is imposed regardless of the residence of the owner. All of these statutes contain other provisions relating to the collection of this tax which make it clear that the tax is imposed upon all shares of residents as well as nonresidents. Often the bank is required to pay the tax just as if it
101 were its own tax obligation; if this is not so, the bank is required to furnish a list of its stockholders to the proper tax official, stating the names, number of shares and residences of each, and is subject to penalty if it fails to do so; it is also required to withhold dividends and refuse to transfer the stock upon its books until the tax is paid; a lien on the stock is created either for the benefit of the taxing unit or for the bank if it must pay.

These provisions provide the means by which
102 taxes against the stock of nonresidents can be easily collected and, in connection with the other provisions, clearly show that these statutes tax all of the stock of local state banks regardless of whether or not the owners reside in the state.

Following is a brief digest of the tax provisions of the states which impose ad valorem taxes on shares of stock in local state banks, including the questionable states of Florida, New Hampshire, and Rhode Island:

Arizona

Revised Code of 1928, Section 3069, as amended by Chapter 110, Laws of 1931. 103

The shares of stock of banks shall be assessed and taxed as other property in the names of the shareholders of the several shares thereof, but entered and taxed in the name of, and be payable by, the bank.

Section 3070. Upon demand of the assessor, an officer of the bank shall make out and deliver a sworn statement showing the number of shares, the name, and residence of each shareholder, and 104 the number of shares owned by him. Every such shareholder shall, where the bank is located, render to the assessor, at their full cash value, the shares owned by him, and if he fails to do so the assessor shall list and assess such unrendered shares as other unrendered property. "The taxes due thereon shall be paid by such corporation or association (bank), and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to 105 any shareholder who is in default in the payment of taxes due on his shares," nor shall it permit a transfer on the books until such tax is paid.

Section 3071. Every bank for the purpose of said assessment shall be considered as located in every local taxing unit where it carries on business. The shares of such bank shall be taxed in each local taxing unit for such proportion of their value as the assets situated in that unit bear to the entire assets of the bank.

Arkansas

106 Crawford & Moses Digest (1921)

Section 9948. Shares in banks that the holders or owners thereof are not required to list in person by the provisions of this Act shall be listed by the principal accounting officer of the bank showing the name or names of the persons owning and holding the same.

Section 9949. The taxes assessed upon the shares thus listed shall be paid by the bank and it may recover from the owner the amount thus paid, or
107 deduct the same from the dividend accruing on such shares, and the amount paid shall be a lien on such shares and shall be paid before a transfer of the stock can be made.

Colorado

Compiled Laws, 1921.

Section 7450. Shares of the capital stock of national banks doing business within the state "held by any person or body corporate, shall be included in the valuation of the personal property of such
108 person or body corporate, in the assessment of taxes in the county where such banking associations are located, and not elsewhere, whether the holder thereof resides there or not; and it shall be lawful for the state, county, town or municipal authorities to levy and assess upon such stock * * *."

Section 7451. The officer of every bank shall list with the assessor the name of each person owning shares and the amount owned by him. Such stock shall be assessed by the assessor in all respects the same as similar property belonging to other per-

sons. For the purpose of securing the collection of this tax, each bank shall be liable to pay the same as the agent of each of its shareholders, and the bank shall retain so much of any dividends as shall be necessary to pay any tax levied upon its shares. If the bank fails to comply with the provisions of this section it shall be liable for the tax upon all of the said shares. 109

Connecticut

General Statutes Revision of 1930.

Section 1272. An officer of each bank shall file in the office of the Tax Commission a report showing, inter alia, the names and residences of its stockholders and the number of shares held by each. Each bank shall pay to the Commissioner one per cent of the value of such shares. In Shippee v. Riverside Trust Company, 156 A. 43 (Conn. 1931), the Supreme Court of Connecticut had occasion to discuss this statute and there said that this tax was in substance one upon the property of shareholders whether they be residents of the state or not. 110 111

Delaware

Laws of 1921, Chapter 104.

Section 2. The shares of stock in banks whose principal places of business are in this state shall be taxed.

Section 4. An officer of the bank shall file with the State Bank Commissioner a report showing the name and residence of each of its shareholders and the number of shares held by each.

112 Section 6. When this stock is assessed, the Commissioner notifies the bank and it is the bank's duty to notify its stockholders.

Section 7. Shares shall be deemed and held to be taxed in the city or town where the principal place of business of the bank is located and not elsewhere. The tax so assessed against such stockholders shall be a lien upon their stock.

Section 8. If the bank chooses, it may elect to pay the tax thus assessed and if it does so it is not required to file the reports herein provided.

113 Section 10. Taxes thus imposed may be collected by public sale of the stock at the principal place of business of the bank. The Bank Commissioner shall also have the right to require any bank to withhold the payment of dividends or so much thereof as is necessary to pay the tax assessed upon his shares.

Florida

Compiled General Laws of Florida, 1927.

Section 907. "Taxation of stock; shares in
114 banks.—The owner or holder of stock in any incorporated company doing business under corporate name shall not be taxed for such stock; Provided, That such stock is returned for taxation by such incorporated company and taxes are paid thereon by such company, or the property of said corporation is assessed for taxes where located and taxes are then paid on such property. All shares of banking associations organized within this State, pursuant to the provisions of Congress to procure a national currency secured by a pledge of United

States stocks, and to provide for the circulation and redemption thereof held by any person or body corporate, shall be included in the valuation of the personal property of such person or body corporate, in the assessment of taxes in the town or city where such banking association is located and not elsewhere, whether the holder resides there or not; but not at a greater rate than is assessed on other moneyed capital in the hands of individuals; and for the purpose of securing the collection of taxes assessed upon said shares, each banking association shall pay the same as the agent of each of its shareholders, and the said association may retain so much of any dividend belonging to any shareholder as shall be necessary to pay any taxes levied upon its shares."

In Lewis State Bank v. Bridges, 156 S. 144, it was held that this statute did not require a state bank to return the shares of its stock for taxation and when it had not done so the bank could not be assessed for those shares. The Court said that, if the bank elected to return and pay the taxes on its stock in the hands of its stockholders, it did so as the agent of the stockholders and might retain the amount of taxes so paid from any dividend in favor of the stockholder. It would seem, therefore, that if the bank chooses to make the return the tax would, in effect, be applied to both resident and nonresident stockholders. If, however, the bank did not make such a return it would seem that only resident stockholders could be taxed since there is no special provision providing for the col-

118 lection of any tax against nonresidents. If such is the law, there is a discrimination against stock of national banks located in Florida.

Georgia

Georgia Political Code, 1926.

Section 993 (290). The shares of the stockholders in banks located in this state, whether the holders are residents or nonresidents, shall be taxed in the county where the bank is located and not elsewhere. The bank shall make the return of the
119 shares herein mentioned and pay the taxes herein provided.

Illinois

Smith-Hurd's Illinois Revised Statutes, 1933, Chapter 120.

Section 39. The stockholders of every bank located within this state shall be assessed and taxed upon the value of their shares of stock therein in the local taxing unit where the bank is located and not elsewhere "whether such stockholders reside in such place or not."

120 Section 40. Each bank shall keep a full and correct list of the names and residences of its stockholders and the number of shares held by each, which list shall be subject to the inspection of the assessing officers.

Section 41. The County Clerk shall enter the valuation of such shares in the tax lists in the names of the respective owners.

Section 42. The collector of taxes may collect the tax on such shares by a sale of the stock and

the tax shall remain a lien on such shares until payment is made. 121

Section 43. For the purpose of collecting such taxes, it shall be the duty of the bank to retain so much of any dividend or dividends as shall be necessary to pay the same, and if the bank fails to do so the officer responsible therefor shall be liable for the tax.

Indiana

Acts of 1933, Chapter 83.

Section 4. Shares of the capital stock of every bank, organized under the laws of this state or organized under the laws of Congress doing business here, shall be assessed to the respective owners of such shares in the local taxing unit where the bank is located. The tax assessed shall become a lien upon the respective shares. 122

Section 8. Every bank shall elect whether it shall pay the taxes thus imposed upon its stock.

Section 9. If it elects not to pay, it shall deliver to the County Auditor a report showing the names and addresses of its shareholders and the number of shares owned by each of them. 123

Section 12. If any bank has elected not to pay such taxes it shall be its duty to discharge the lien of such taxes upon such shares of stock by retaining so much of the dividends due or becoming due to the respective owners against whom such tax has been assessed as may be necessary to pay such tax. If the bank fails to do this it shall thereby become liable for such taxes.

Iowa

124 Code of Iowa, 1927.

Section 6998. Shares of stock of banks located in this state shall be assessed to the individual stockholders at the place where the bank is located.

Section 6999. The officers of the bank shall furnish the assessor with lists of all the stockholders and the number of shares owned by each.

Section 7007 a1. The banks shall be liable for the payment of such taxes assessed to their stock-
125 holders and such taxes shall be payable by the bank in the same manner and under the same penalties as in cases of taxes due from an individual taxpayer.

Section 7007 a2. Such banks may recover from each stockholder his proportion of the taxes so paid and shall have a lien on the stock and unpaid dividends therefor.

Section 7007 a3. If the unpaid dividends are insufficient, the bank may enforce its lien by a public sale of the stock.

126 Kansas

Revised Statutes of Kansas, 1923, Article 11.

Section 79-1101. Shares of stock issued by banks located in this state shall be assessed to the individual shareholders at the place where the particular bank is located. The officer of the bank shall furnish to the assessor the list of all shareholders and number of shares owned by each. The net assessment of all shares shall be divided among the shareholders proportionately and the bank

shall pay the tax assessed upon such shares and 127
shall have a lien thereon until the same is satisfied. Should the bank fail to pay the taxes levied upon its shares, the property of the individual shareholders shall be liable therefor.

Kentucky

Carroll's Kentucky Statutes, 1930.

Section 4092 (a). An annual tax is hereby imposed upon the shares of stock of all banks doing a business here and such tax shall be paid to the Sheriff of the county annually by such banks for 128
and on behalf of the owners of such shares of stock. Such taxes shall be for state purposes only and shall be in lieu of all other taxes upon said shares with the exceptions that counties, cities, and school districts may impose the tax upon such shares to a limited amount.

In United States of America v. John B. Lewis, United States District Court (W. D. Ky. April 8, 1935), Corporation Tax Service, Kentucky, page 2902, it was held that this statute imposes the tax 129
upon the owners of the shares instead of upon the banks themselves, and thus the Court reached the conclusion that preferred stock in national banks and state banks located in Kentucky, the legal title of which was held by Reconstruction Finance Corporation, was exempt under this statute as property of the United States.

Louisiana

Louisiana General Statutes, 1932, Title VIII, Chapter 8.

Section 684. Shares of stock of all banks doing business in this state are hereby declared subject to taxation.

Section 685. The shares shall be assessed at their actual value to the shareholders at the domicile or location of the bank regardless of the domicile of the shareholders. The bank shall furnish to the assessor a complete list of those who are carried on its books as shareholders. All taxes so assessed shall be paid by the bank and it shall be entitled to collect the amount thus paid from the shareholders.

Section 690. The taxes on such shares shall be collected in the same manner as the taxes on other property of a like nature are collected. If any Court holds that the bank is not liable to pay the taxes on its shares, the tax shall be collected from the shareholders and each shareholder failing to pay the same may be proceeded against by a rule to produce and by all the other proceedings provided for the collection of taxes on moveable property.

Maine

Revised Statutes of Maine, 1930, Chapter 12.

Section 76. An officer of every bank doing business in this state shall send to the state assessors a certified list of all stockholders, and their residences, showing the number of shares owned by each.

Section 77. The Board of Assessors shall assess an annual tax upon the true value of such shares. 133
All taxes so assessed shall be paid by the banks and they may charge the tax so paid pro rata to the individual stockholder.

Section 78. The tax so assessed upon shares owned by nonresidents shall be returned by the Treasurer of the State to the municipality in which the bank is located.

Maryland

Consolidated Laws of Maryland, 1924, Article 81.

Section 4 (6). All shares of stock in national 134
banks situated in this state shall be subject to assessment in the county and/or city where the holders thereof reside, or, if they be nonresidents, in the county and/or city in which the principal office of such bank is located.

Section 7. All shares of stock in a domestic corporation shall be subject to assessment in the county and/or city in which the owners respectively reside, or, in case the shares be owned by nonresidents of this state, in the county and/or city in 135
which the principal office of the corporation is situated.

Section 15 (e). Shares of stock so assessed shall be taxed to the several owners thereof and the taxes thereon shall be debts of such owners but may be collected in each case from the bank or other corporation which shall be bound to pay the same for the account of its stockholders but may obtain reimbursement therefor from the respective stockholders and may charge the same in reduction of

136 any amounts due to them as defendants or otherwise.

Michigan

Compiled Laws of 1929.

Section 3396, S. 8. All shares of banks which shall be doing business in this state under whatsoever authority shall be assessed and taxed as herein provided.

Section 3402, S. 14. All shares in such banks shall be assessed to their owners in the local taxing unit where the bank is located.

137 Section 3437. The assessor shall call upon the cashier of any bank and demand the payment of a tax upon its shares and thereupon it shall become the duty of the cashier to pay the same and charge the amount so paid against the shares of stocks so taxed.

Minnesota

Mason's Minnesota Statutes, 1927.

Section 2026-1. The stock of every bank in this state shall be assessed and taxed in the local tax-
138 ing unit where the bank is located, whether the stockholders of such bank reside in such place or not, and shall be assessed in the name of the bank. An officer of the bank shall list all of the shares for assessment in the same manner as other personal property is listed.

Section 2026-2. Every bank shall keep a list of the names and residences of the stockholders showing the amount of shares held by each, which list shall be open to the inspection of the taxing officer.

Section 2026-3. To secure the payment of the

taxes levied against the stockholders, every bank before declaring any dividend shall deduct from its annual earnings such amount as may be necessary to pay any taxes levied against its stockholders. 139

Mississippi

Mississippi Code, 1930.

Section 3138. The proper officer of each bank in this state existing by the laws of this state shall deliver to the assessor of taxes of the county in which it is located a statement giving the number and amount of all the shares of its capital stock 140 and the amount of undivided profits or surplus, and the value of such shares shall be the basis of the taxation of such shares to the bank, and the taxes levied on such bank shall be a first lien on its assets. In the case of national banks, a precisely similar amount shall be assessed and collected from the shareholders thereof at the domicile of the bank as would have been assessed upon and collected from the bank had it been created under the Laws of Mississippi, but each said bank shall 141 be liable to pay any taxes as agent of each shareholder and may charge the same to the shareholders' expense accounts.

Missouri

1932 Statutes Annotated, Title 59.

Section 9765. All shares of stock of incorporated banks shall be assessed at their actual cash value. The proper officer shall deliver to the assessor a list of all shares of stock held therein, to-

142 gether with the names of the persons holding the same.

Section 9766. The taxes assessed on such shares shall be paid by the corporation as agent of each of its shareholders and shall be a lien upon such shares, and the corporation may recover from the owner any amount so paid by it and deduct the same from dividends accruing on the stock. The amounts so paid shall be a lien upon the stock, which lien must be satisfied before the stock may be transferred upon the corporate books.

143

Montana

Revised Codes of Montana 1927 Supplement, Chapter 162.

Section 2067. All shares of the stock in any state bank doing business in this state shall be taxable to the owners of said shares in the local taxing unit where the bank is located and not elsewhere whether or not the owners are residents of such taxing unit. The proper officer of the bank

144 shall furnish to the assessor a list of the stockholders and the residences and number of shares held by each. For convenience, the assessment of such shares shall be entered on the assessment list under the name of the bank but the names of the true owners shall also appear. The bank shall be liable for payment of taxes against such shares and such taxes shall be payable and may be collected from the bank in the same manner and under the same penalties as other taxes. The bank may recover from the owners the taxes so paid and shall have

a lien therefor upon the shares and accrued dividends thereon. 145

Nebraska

Compiled Statutes, 1929.

Section 77-702. The proper officer of every bank shall make a statement showing the number of shares of its capital stock, the name and residence of each shareholder, the number of shares owned by each and the value of such shares, and shall deliver the statement to the proper county assessor. Such capital stock shall thereupon be listed and assessed by him, the same to be assessed and 146 collected in the taxing district where the principal place of business of such bank is located. The bank shall pay the taxes assessed upon its stock and shall have a lien thereon for the same.

Nevada

Compiled Laws, 1929.

Section 6572. All shares of stock in banks located within the state shall be assessed to the owners thereof in the local taxing unit where such banks are located and not elsewhere whether such owner 147 is a resident of the taxing unit or not.

Section 6575. The proper officer of every bank shall deliver to the assessor a list of the stockholders in such bank and the number of shares owned by each.

Section 6576. Every bank shall pay to the tax collector for the unit in which the bank is located the amount of the tax so assessed and if the tax is not paid the bank shall be liable for the same and

148 for equal penalties provided for by law in the collection of delinquent taxes upon other property.

Section 6577. The bank paying such tax shall have a lien on the shares and all the rights and property of the stockholders in the bank for the payment of said taxes.

New Hampshire

Public Laws New Hampshire, 1926.

(The first six sections of Chapter 70 provide for the taxation of shares in national banks in a manner generally similar to the tax statutes which
149 have been previously set forth.) Sections 8 and 9 impose an excise tax upon state banks for the privilege of doing business. This tax is at the rate of one-half of one per cent of the savings deposits and one per cent or the special deposits or capital stock. Section 13 provides that the revenue from such taxation shall be allocated proportionately to the local taxing units in which the shareholders reside. Section 16 of Chapter 121 as amended by Chapter 51 of the Laws of 1923 allocated the proportion of
150 this tax represented by the interest of nonresident stockholders to a state literary fund.

Chapter 60, Section 18, stock in corporations shall not be taxed except as otherwise specifically provided.

In view of these provisions, it seems that if any tax is imposed upon the stock of state banks in New Hampshire it is the tax provided for in Sections 8 and 9 of Chapter 70. These sections tax the interest of both resident and nonresident stockholders.

New Jersey

Cumulative Supplement to Compiled Statutes 151
1911-1924.

Section 208-200 a(1). The shares of the common stock of banks whose principal places of business are in this state shall be assessed according to their true value.

Section 208-500 a(3). The proper officer of every bank shall furnish to the local taxing official a statement showing the value of its shares, the residences of its stockholders, and the number of shares owned by each. 152

Section 208-500 a(7). The shares of common stock of every bank shall be assessed against the common shareholders in the taxing unit within which the principal place of business of such bank is located, and such tax shall be a lien upon the stock and such stock and such stock may be levied upon and sold in default of payment. It shall be the duty of the bank to pay the tax assessed against its shareholders on demand and the bank shall have a lien upon the shares for such payment and may 153 retain the amount so paid out of the dividends that may be declared on such shares.

New Mexico

New Mexico Statutes Annotated, 1929.

Section 141-504 (1). The stockholders of every bank in this state shall be assessed and taxed on the value of their shares in the local taxing unit where such bank is located, whether such stockholders reside in such place or not, and shall be

154 assessed in the name of the bank as the agent of the stockholders. The bank shall furnish a list of its capital stock and the names of its stockholders.

Section 141-504 (2). The bank shall keep a list of the names and residences of its stockholders, subject to the inspection of the state tax commission.

Section 141-504 (3). The bank shall, before declaring any dividend, deduct from its annual earnings such amount as may be necessary to pay any taxes thereafter to become due upon its shares,
155 and such bank shall pay the taxes.

North Carolina

North Carolina Code of 1931.

Section 7971 (59) (1). Every bank shall list all the shares of its capital stock whether held by residents or nonresidents.

Section 7971 (59) (2). The value of such shares as determined by the State Board of Assessment shall be certified to the county in which the bank
156 is located.

Section 7971 (59) (6). The taxes assessed upon said shares shall be paid by the proper officer of the bank in the same manner as other taxes, and in default thereof the officer and the bank shall be liable for such taxes and a ten per cent penalty. Any taxes so paid may be recovered with interest from the owners thereof by the bank and may be deducted from the dividends accruing upon such shares.

North Dakota

Compiled Laws of 1913. 157

Section 2115 (1). The shares of stock of every bank located in this state shall be assessed to the individual stockholders at the place where the bank is located and not elsewhere.

Section 2115 (2). The proper officer shall file a statement with the State Taxing Commissioner showing the number of shares of capital stock of such bank, the names and residences of the several stockholders and the amount owned by each.

Section 2117. To secure the payment of taxes 158
on bank stock, it shall be the duty of every bank to retain so much of any dividend belonging to any stockholder as shall be necessary to pay any taxes levied upon his shares, and the amount of such tax shall be a lien on the dividends, the capital stock, and the assets of the bank. Any officer who authorizes the paying of a dividend in violation thereof shall thereby become liable for such tax. If the tax is not paid, the County Treasurer where the bank is located shall sell the shares like 159
other personal property.

Ohio

General Code 1929.

Section 5408. All the shares of the stockholders in banks located in this state shall be listed, assessed, and taxed in the manner hereinafter provided.

Section 5410. Each bank shall keep a list of the names and residences of its stockholders, and the

160 number of shares owned by each, open to the inspection of the proper tax officials. The taxing commission shall assess all taxable shares in the name of the banks.

Pennsylvania

Purdon's Pennsylvania Statutes, 1931.

Cumulative 1934 Supplement, Title 72, Section 1931.

It shall be the duty of the department of revenue to assess the shares of bank stock at four mills on
161 their actual value. It shall be the bank's duty to collect said tax from its stockholders within sixty days of the assessment and pay the same to the State Treasurer.

Title 72, Section 1941. The taxes assessed under this Act shall be a lien upon the shares and the accruing dividends thereon.

Rhode Island

General Laws 1923, Chapter 60.

Section 5. The cashier of every bank shall fur-
162 nish to the assessors of the town where such bank is located a list of all the stockholders in such bank not residing within the state, together with the amount of stock held by each stockholder.

Section 9. The taxes which shall be assessed on shares in national banks held by persons not residing within this state shall be a lien upon said shares and upon the dividends thereon until all such taxes are paid and, until such payment, no transfers shall be allowed or dividends paid. "The assessors of the several towns and cities of the

state, whenever they shall assess a tax on the stock-
holders of any bank who are nonresidents of the 163
state, shall immediately notify said bank of such
assessments with the amount assessed to each of
its stockholders."

Chapter 59, Section 10, provides that personal property which shall be subject to taxation includes the stock in any bank which is not exempt from taxation by the laws of this state or of the United States.

From the above provisions, it is quite clear that
all of the stock of state banks in Rhode Island is 164
taxed regardless of the residence of the owners. The statute is peculiar, however, in that the first part of Section 9 which is the usual provision relating to the collection of such taxes only applies to national banks.

South Carolina

Constitution, Article X.

Section 5. All shares in banks located in this state shall be listed and taxed for municipal purposes in the local taxing unit where such bank is 165
located and not elsewhere.

Civil Code, 1932.

Section 2663. All shares of the stockholders in any bank located in this state shall be listed and taxed in the local taxing unit where the bank is located and not elsewhere.

Section 2665. The banks shall keep a list of the names and residences of its shareholders and the number of shares held by each open to the inspection of the proper tax official.

166 Section 2667. The auditor of the county in which the bank may be located shall enter the amount of each shareholder's stock in his name.

Section 2668. Any taxes assessed on such shares shall be a lien thereon and in case of nonpayment of such taxes it shall be unlawful for the proper officer of the bank to permit such shares to be transferred or to pay any dividends to the delinquent stockholders.

Section 2669. All banks shall pay to the collecting officer of the county in which they are located
167 all taxes that may be assessed upon their shares in the hands of their shareholders.

South Dakota

Compiled Laws, 1922.

Section 6696. The stockholders of every bank located in this state shall be assessed and taxed on the value of their shares in the local taxing unit where the bank is located and not elsewhere, whether such stockholders reside in such places or not.

168 Section 6697. Every bank shall furnish a list of the names and residences of its stockholders and the amount of shares owned by each to the proper tax official.

Section 6698. To secure the payment of such taxes it shall be the duty of every bank to retain so much of any dividends belonging to such stockholders as shall be necessary to pay the taxes levied upon their shares. If the tax is not paid, the County Treasurer may sell the shares like other personal property.

Tennessee

169 Code of Tennessee, 1932.

Section 1391. The shares of stock of stockholders of any bank doing business in this state shall be assessed as the personal property of the stockholders whether they reside within or without the state.

Section 1393. Such assessments shall be made in the local taxing unit in which the bank is located.

Section 1400. Every bank shall keep a list of the names and residences of its stockholders, and 170 the number of shares held by each, open to the inspection of the proper tax official.

Section 1401. The revenue collector may collect the taxes assessed on the shares of nonresident stockholders by attachment proceedings.

Section 1402. It shall be the duty of the bank to pay the taxes assessed on its stock and it shall have a lien for the purposes of reimbursement.

Texas

171 Compiled Texas Statutes, 1928, Article 7166.

The proper officer of every bank doing business in this state shall file with the Tax Assessor of the city or town in which it is located a list of the names and residences of its shareholders and the number of shares owned by each. Every shareholder shall render the shares owned by him to the tax assessor in the city or town where the bank is located and in case of failure to do so the assessor shall assess such unrendered shares as other un-

rendered property. The taxes due upon such shares
172 shall be a lien thereon and no bank shall pay any dividend to any shareholder who is in default nor permit a transfer upon its books of any share of such shareholder.

Virginia

Code of 1930, Appendix Tax Code.

Section 90. The shareholders in any bank doing business in this state shall be assessed and taxed on their shares of stock therein. Each bank shall file with the commissioner of revenue of the city or
173 town in which it is located a report giving the names and residences of its stockholders and the number of shares held by each.

Section 91. The commissioner shall assess upon each stockholder a tax at the rate of $1.00 on each $100 of the value of his stock. The tax assessed upon each stockholder shall be a first lien upon the stock standing in his name and upon the dividends due and to become due. The bank shall hold the dividends or other funds belonging to the stock-
174 holder and apply the same to the payment of the tax assessed.

Section 93. Every bank shall pay the taxes assessed against its stockholders.

Section 94. Should any bank fail to pay such tax, it shall be the county assessor's duty to levy upon the stockholder's stock and sell the same at public auction for cash. The bank shall cause the stock to be transferred to the purchaser at such sale.

West Virginia

West Virginia Code of 1931, Section 14. (Code of West Virginia 1932—Sec. 683.) 175

Shares of stock in banks shall be assessed to the holders in the local taxing unit where the bank is located and not elsewhere, whether the holders reside there or not. The taxes so assessed upon said shares shall be paid by the proper officer of the bank in the same manner and at the same time as other taxes are required to be paid. In default of such payment the officer and the bank shall be liable for such taxes, plus a ten per cent penalty. 176 Any taxes so paid may be recovered by the bank from the owners of the shares and may be deducted from the dividends accruing on such shares.

Wyoming

Revised Statutes, 1931.

Chapter 113-118. Shares of stock in all banks shall be assessed and taxed in the names of the respective shareholders by the city or county where such banks are located. The proper officer of the bank shall return to the assessor of said city or 177 county a list of the names of the shareholders and the amount held by each. Such bank shall pay the tax that is levied upon its shares and the payment so made shall be charged to and become a lien against the profits of the bank accruing to the shareholder.

178 EXHIBIT C.

States Which Impose Ad Valorem Taxes On Shares In Foreign State Banks Owned By Residents:

With the exception of Ohio, no state has any specific provision relating to the taxation of shares in foreign state banks owned by residents. The following states have statutes which (1) specifically tax stock in foreign corporations which pay no property or capital stock tax in the state, or (2) include such stock in their definitions of property which is subject to taxation.

179

Alabama

Alabama Code of 1928, Section 3021-3. (State v. Kidd, 28 S. 480 (1900). Shares of stock in foreign corporation owned by residents taxable.)

Arkansas

Crawford and Moses Digest, 1921, Sections 9853, 9890, 9894.

California

Political Code, 1931, Sections 3627, 3629-5.

180

Delaware

Revised Code, 1915, Chapter 44, Section 1098. (As a practical matter personal property is never taxed on an ad valorem basis in Delaware. Corporation Tax Service, Delaware, pages 2008, 2009, 2004; "A Survey of Bank Taxation in the United States"; report of Committee on Taxation of American Bankers' Association, January 2, 1935, page 33.)

Florida

Compiled Laws, 1927, 1934 Cumulative Supplement, Section 1041. 181

Georgia

Code of 1926, Section 1002 (1). (In Coco Cola Company v. City of Atlanta, 110 S. E. 730 (Ga. 1922), held shares of stock in foreign corporations owned by residents taxable in Georgia.)

Illinois

Smith-Hurd Statutes, 1933, Chapter 120, Section 1 second.

Chapter 120, Section 39, exempts stock owned by residents in foreign national banks. 182

Indiana

Burns Annotated Statutes, 1926, Sections 14034, 14035. Laws of 1933, Chapter 81, Section 1 (a). (Hasely v. Ensley, 82 N. E. 809 (Ind. App. 1907), held stock in foreign corporation owned by resident taxable.)

Iowa

Iowa Code of 1927, Sections 6953-7, 6985. (Judy v. Beckwith, 114 N. W. 565 (Ia. 1908). Shares in foreign corporation owned by resident taxable.) 183

Kansas

Revised Statutes, 1923, Sections 79-101, 79-102. (Weiss v. Stubblefield, 116 P. 205 (Kan. 1911). Stock in foreign corporation owned by resident taxable.)

Kentucky

Carroll's Kentucky Statutes, 1930, Sections 4020, 4088.

Maine

184 Revised Statutes, 1930, Chapter 13, Section 5.

Maryland

Consolidated Laws of Maryland, 1924, Article 81, Section 6 (5). (Shares in foreign national banks owned by residents not taxable.)

Michigan

Compiled Laws, 1929, Section 3396 S. 8, 9. (Shares in foreign national banks owned by residents not taxed.)

185 Minnesota

Mason's Minnesota Statutes, 1927, Sections 1999-1, 2337.

Mississippi

Mississippi Code of 1930, Section 1382. (Barnes v. Jones, 103 S. 773 (Miss. 1925). Shares of stock in foreign corporations owned by residents taxable.)

Montana

Political Code, 1921, Section 1996. (State ex rel. Rankin v. Harrington, 217 P. 681 (Mont. 1923).
186 Shares in foreign corporation owned by resident taxable in Montana unless they have acquired a business situs elsewhere.)

Nebraska

Compiled Statutes, 1929, Sections 77-106, 77-701, 77-710. (Bute, et al. v. Hamilton County, 202 N. W. 616 (Neb. 1925). Stock in foreign corporation owned by resident taxable.)

Nevada

187 Compiled Laws, 1929, Sections 6418, 6419, 6426.

North Dakota

Compiled Laws, 1913, Sections 2075, 2076. (As a practical matter no property tax is being levied against intangible property in North Dakota. Corporation Tax Service, North Dakota, page 2003; "A survey of Bank Taxation in the United States", report of Committee on Taxation of American Bankers' Association, Jan. 2, 1935, page 33.)

Oklahoma

188 Oklahoma Statutes, 1931, Sections 12338, 12589. (Oklahoma County v. Ryan, 232 P. 824 (Okla. 1924). Shares of stock in foreign corporation owned by resident taxable.)

Pennsylvania

Purdon's Pennsylvania Statutes, Annotated, 1931, Title 72, Section 4821.

Rhode Island

189 General Laws, 1923, Chapter 29, Section 10. Section 9 exempts shares in foreign national banks owned by residents.

South Carolina

Code of 1932, Sections 2566, 2604.

South Dakota

Compiled Laws, 1929. Section 6669 includes stock in all banks, except foreign national banks, as property subject to taxation.

In the following states, shares of stock in foreign

190 corporations owned by residents are exempt from ad valorem taxes, but the dividends therefrom are taxable under the income tax.

Massachusetts

Laws of Massachusetts Annotated, 1933.

Chapter 59, Section 5-27 as amended by Acts of 1931.

Chapter 426, Section 183, property, the income from which is taxed, is exempted from property taxes.

191 Chapter 62, Section 1(b) as amended by Acts of 1925, Chapter 343, Section 7, imposes an income tax on the dividends from stock in all corporations.

New Hampshire

Public Laws, 1926, Title 9, Chapter 60, Section 8. Stock in corporations not taxed.

Title 9, Chapter 65, Section 3, as amended by Chapter 184, Laws of 1933, imposes an income tax on the income from all intangibles.

New York

192 McKinney's Consolidated Laws, 1928, 1934 Supplement.

Book 59, Section 3, exempts personal property from taxation.

Book 59, Section 359-1, imposes an income tax on dividends from stock in all corporations.

North Carolina

1933 Supplement to North Caroline Code of 1931.

Section 7971 (19) exempts from personal prop-

erty taxation shares in foreign corporations, the income from which is taxable under Section 7880 (129). 193

Tennessee

Tennessee Code, 1932.

Section 1118, stock subject to income tax not subject to ad valorem tax.

Sections 1090, 1097, impose income tax on dividends from all stocks.

Utah

Revised Statutes, 1933.

Section 80-1-1 exempts intangible property from taxation. 194

Section 80-14-4 imposes an income tax on the dividends from all sources whatever.

Vermont

Public Laws, 1933, Chapter 41, Section 915, exempts from property taxation intangible property, the income from which is taxable.

Chapter 39 levies income tax on income from stock in corporations which are not subject to the Vermont Franchise Tax. 195

Virginia

Code of 1930, Appendix Tax Code. Chapter 7, Section 71, taxes income from all shares in corporations which do not pay a franchise tax in the state in lieu of all property taxes on such shares.

Washington

Remington's Revised Statutes, 1933, Section 11111-1 exempts shares of stock from ad valorem taxation.

196 Laws of 1935, House Bill No. 513, Sections 6(8), 9(a), imposes a tax on dividends from stock in corporations not paying a Washington income tax.

Wisconsin

Wisconsin Statutes, 1933, Section 70.11(10), exempts all stock from property tax.

Section 71.02(b) imposes income tax on all dividends from stock except (Section 71.04(4)) diyidends from stock in corporations paying Wisconsin income tax.

197 West Virginia

West Virginia Code, 1931, Chapter 11, Article 5, Section 1, provides that the shares of capital stock owned by residents in corporations located in other states, whose property is taxed in such other states, shall not be required to be listed for taxation.

Section 6 provides that, when the property, stock, or capital of any company is assessed to such company, no person owning any share therein shall be required to list the same or be assessed with the 198 valuation thereof.

Laws of 1935, House Bill 441, Section 21-4, includes dividends in income subject to taxation under the new income tax law.

Section 2 defines dividends as "any distributions made by corporations out of their earnings or profits to their shareholders."

Missouri

In State ex rel. Koel.. v. Lesser, 141 S. W. 888 (Missouri 1911), the Supreme Court of Missouri

interpreted their tax statutes as not imposing any tax upon the stock of any domestic or foreign corporation. Although the statutes have been slightly changed since then, the Missouri Tax Commission are of the opinion that this case is still the law in Missouri and have rendered a specific opinion in In the Assessors, Manuel 1931, No. 82, that shares of stock in foreign state banks owned by residents in Missouri are not subject to taxation. Corporation Tax Service, Missouri, page 315H. 199

Kansas City, however, imposes a tax upon all shares of stock in foreign corporations which are not taxed in that city. Kansas City Ordinance 1928, Chapter 13, Section 989. 200

Two states levy neither an income nor a property tax on stock in foreign banks owned by residents:

Ohio

Throckmorton's Code of 1929, Section 5328-1, specifically exempts from taxation nonwithdrawable shares in financial institutions located in other states. The Tax Commission has specifically ruled that under this section national and state bank stocks of states other than Ohio owned by residents are not subject to taxation in Ohio. Corporation Tax Service, Ohio, page 305-19. 201

New Jersey

Compiled Statutes, 1910, Section 208-66d(203)(c). Personal property owned by citizens of New Jersey, situate and being out of the state, upon which taxes shall have been assessed and paid with-

202 in twelve months, is exempt from taxation in New Jersey. In Trenton v. Standard Fire Insurance Company, 73 A. 606 (N. J. Law, 1909), the Court, interpreting this statute in the light of its history, held that it exempted from taxation all stock owned by New Jersey residents in foreign corporations paying taxes on their property where it was located.

EXHIBIT D.

203 Service Contract Between First Service Corporation and First Bank Stock Corporation

This Agreement Made this.....day of:....., 19.., between First Service Corporation, a Minnesota Corporation, first party, and First Bank Stock Corporation, a Delaware corporation, second party,

Witnesseth

Whereas, second party is the owner of a majority of the capital stock of various banks, trust companies and financial corporations located and
204 doing business in the Ninth Federal Reserve District, and

Whereas, first party is organized and equipped to examine and report upon the condition, business methods, management and operation of banks and financial corporations of the kind controlled by second party as aforesaid, and

Whereas, second party desires to avail itself of the services of first party for the purpose of protecting and preserving second party's interests on account of its ownership of the stock of said banks

and financial corporations and to enable it more intelligently to exercise its rights as such stockholder, 205

Now, Therefore, in consideration of the sum of ..... ($.....) per month to be paid by second party to first party on the first day of each calendar month in advance, for a period of one (1) year commencing....., 19..., first party covenants and agrees:

1. To make examinations from time to time of the books, records, condition, management and general business methods of all banks and other financial corporations in which second party has or shall have any interest as stockholder, and to render periodical reports of such examinations to second party. 206

2. To make similar examinations and reports as to any bank or other financial corporation in which second party is contemplating or may hereafter contemplate acquiring a stock interest, whenever requested so to do by second party.

3. To prepare the consolidated annual income tax return for second party and all corporations in which it owns a controlling interest, and to handle all of the income tax work generally of second party and its subsidiaries. 207

4. To handle all general and blanket insurance matters for second party and its subsidiaries. The premiums paid and actual out-of-pocket expense incurred in connection with this item shall be pro rated by first party to First Bank Stock Corpora-

208 tion and its subsidiaries, such pro rating to be made in the absolute discretion of first party, whose determination shall be binding upon all the parties in interest.

5. To handle all of the advertising and publicity work for the corporation and its subsidiaries. The actual out-of-pocket expense incurred by first party in connection with this item shall be pro rated to First Bank Stock Corporation and its subsidiaries, such pro rating to be made in the absolute discretion of first party, whose determination
209 shall be binding upon all the parties in interest.

6. To prepare forms for the use of second party in connection with its own corporate matters and bookkeeping, and to furnish supplies thereof, as requested, at reasonable prices to be determined by first party.

7. To attend to the purchasing of furniture, fixtures and equipment as and when requested by second party.

210 8. To render such other services and furnish such other information from time to time during the period of this contract as first party may be equipped to render, as requested by second party.

It is understood and agreed that first party may enter into contracts with the several banks and financial corporations in which second party has a stock interest for the purpose of rendering services direct to said banks and other financial corporations, and may receive compensation for such

services separate from and in addition to the compensation to be paid by second party hereunder. 211

The period of this agreement shall commence on ....., 19..., and may be renewed from year to year by mutual agreement between the parties and shall be considered as automatically renewed unless notice of termination shall be served by either party upon the other prior to December 15th of any calendar year in which the contract shall be in force.

In Witness Whereof the parties have executed this agreement as of the day and year first above written. 212

First Service Corporation

By .....

Vice President

Attest .....

Secretary

First Bank Stock Corporation

By .....

Vice President 213

Attest .....

Secretary

EXHIBIT E.

Service Contract Between First Service Corporation and Each Member Bank

This Agreement Made this.....day of....., 19..., by and between First Service Corporation, a Minnesota corporation, first party, and..... .....located or having its principal place of business at....., second party.

Witnesseth

In consideration of the compensation hereinafter specified, first party hereby agrees, for a period of one (1) year commencing....., 19.., to perform services for second party as follows:

1. To make periodical examinations of second party's records, accounts, management and methods of doing business and to make recommendations with regard thereto and furnish general advisory service in connection therewith.

2. To act as second party's agent for the purchase and sale of bonds, securities and commercial paper.

3. To furnish from time to time such credit reports as first party may have available relating to any concern or business in which second party may be interested.

4. To furnish second party from time to time with such statistical or other information of interest as first party may prepare or have available.

5. To install system or systems of accounting if requested so to do by second party.

6. To handle the writing or procuring of all insurance for second party in connection with the same service for First Bank Stock Corporation and its subsidiaries. The premiums paid and actual out-of-pocket expense incurred in connection with this item shall be pro rated by first party to First Bank Stock Corporation and its subsidiaries, including second party, such pro rating to be made in the absolute discretion of first party, whose determination shall be binding upon all the parties in interest. 217

7. To attend to all advertising and publicity work for second party except as second party may from time to time direct otherwise. The actual out-of-pocket expense incurred by first party in connection with this item shall be pro rated to First Bank Stock Corporation and its subsidiaries, including second party, such pro rating to be made in the absolute discretion of first party, whose determination shall be binding upon all the parties in interest. 218

8. To prepare standard forms for the use of other banks for which first party may perform services under contracts similar hereto, and furnish supplies thereof to second party, upon request, at reasonable prices to be determined by first party. 219

9. To attend to the purchasing of furniture, fixtures and equipment as and when requested by second party.

10. To handle from time to time such collections as second party may direct, payment for this

220 service to be in addition to the regular monthly compensation hereinafter specified and to be upon such terms as the parties may agree upon in each instance, or, in the absence of agreement, at the standard collection rates.

11. To handle income tax returns and all income tax work generally for second party.

12. To perform such other services of a similar nature from time to time during the period of this contract as first party is or may be equipped to
221 perform.

13. To so co-ordinate its services rendered to second party and all other banks and financial corporations for which first party may perform services under contracts similar hereto, that all may be mutually benefited thereby.

Second party agrees to pay to first party in consideration hereof the sum of.....Dollars ($.....) per month, payable on the first day of each calendar month in advance; provided, how-
222 ever, that said compensation may be altered by mutual agreement between the parties at the end of any three months period, but in the absence of such mutual agreement shall remain fixed at the sum herein specified for the period of the contract.

The period of this contract shall be one (1) year commencing....., 19..., but may be renewed from year to year by mutual agreement and shall be considered as automatically renewed unless a notice of termination shall be served by one party upon the other prior to December 15th

in any calendar year in which the contract shall be in force. 223

In Witness Whereof the parties have executed this agreement as of the day and year first above written.

First Service Corporation

By .....
Vice President

Attest .....
Secretary

..... 224

By .....
Vice President

Attest .....
Cashier

EXHIBIT F.

Section 2 of the Certificate of Incorporation of First Service Corporation provides as follows:

"2. The general nature of its business shall be 225 to do any or all of the things hereinafter mentioned, viz.:

"(a) To conduct researches into and investigations of any and all businesses and business methods and to disseminate the results of such researches and investigations and to give information and advice to banks, trust companies, financial and other corporations;

"(b) To furnish a statistical service of whatso-

226 ever nature for corporations, partnerships, and individuals;

"(c) To keep, examine, audit, analyze, report upon, and certify to the books, accounts and records of corporations, partnerships, and individuals, to install systems of accounting and to transact a general auditing and accounting business, all in such manner and to such extent as may be permitted by law;

"(d) To engage in the business of credit re-
227 porting, to collect and disseminate credit information, and to install credit systems;

"(e) To buy, sell, deal in, and do a general brokerage business in all kinds of listed and unlisted stocks, bonds, and other securities;

"(f) To act directly or indirectly as agent for insurance, indemnity, and surety companies in soliciting and receiving applications for insurance policies and indemnity and surety bonds of every
228 description, to collect premiums, and to do such other business as may be delegated to agents by such insurance, indemnity, and surety companies, and to conduct a general insurance and indemnity and surety bond agency and an insurance and indemnity and surety bond brokerage business;

"(g) To conduct the business of an agent in the collection, adjustment, compromise, and settlement of debts, demands, accounts, and claims of all kinds;

(h) To conduct a general advertising business, 229
both as principals and agents, including the preparation and arrangement of advertisements and the manufacture and construction of advertising devices and novelties, to erect, construct, purchase, lease, or otherwise acquire, fences, billboards, signboards, buildings, and other structures suitable for advertising purposes, to carry on the business of printers, publishers, painters, and decorators in connection with such advertising business, and to make and carry out contracts of every description in connection therewith; 230

(i) To examine into the assets, business and business prospects of corporations, partnerships, and individuals, and to make reports thereon and recommendations as to the value of any such business and the future prospects thereof;

(j) To appraise real estate, securities and other property and to report upon such appraisals;

(k) To furnish information and advice with reference to income and other taxes in such man- 231
ner and to such extent as may be permitted by law;

(l) To purchase, lease, manufacture, or otherwise acquire, hold, sell, exchange, transfer, repair, maintain, and in any other manner deal in and deal with office supplies and furniture and fixtures of every description;

(m) To purchase, lease, or otherwise take, hold, sell, exchange, transfer, repair, maintain, improve, mortgage, and in any other manner deal in and

232 deal with real property, mixed, and personal property wherever situated;

(n) To manage and operate as agent for corporations, partnerships, and individuals, farms, farm lands, and buildings and real estate of every description, rural or urban, wherever situated;

(o) To purchase or otherwise acquire, hold, use, sell, and in any manner dispose of and deal in patents, inventions, improvements, processes, copyrighted publications, trade-marks, trade names,
233 rights and licenses secured under letters patent, copyrights or otherwise, and to grant licenses or other rights therein."

(Title of Cause.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT.

The above entitled action having come duly on for trial before the undersigned judge of the District Court for the Fourth Judicial District, Frank
234 J. Williams appearing on behalf of the plaintiff and Messrs. Junell, Driscoll, Fletcher, Dorsey & Barker appearing on behalf of the defendant, and having been tried before the court without a jury as provided by law on June 5, 1935, no evidence being taken but a stipulation concerning facts having been filed, and the matter having been orally argued and briefs having been submitted, and the court having considered the stipulation concerning facts and the briefs and being advised in the premises does hereby make the following

Findings of Fact.

235

I.

First Bank Stock Corporation is a corporation organized under the laws of the State of Delaware, with its executive office in Minneapolis, Minnesota. During all times material, it has been and now is duly qualified to transact business in Minnesota. At all times material its domicile has been, and now is, in the State of Delaware and not elsewhere. It was organized for the purpose of acquiring and holding all or a majority of the stock of a number 236
of national and state banks located in the States of Minnesota, Michigan, North Dakota, South Dakota, and Montana, and shortly after its organization in 1929 it acquired such stocks. It also caused to be organized certain other banks, the capital stock of which it owns, and it holds certain other securities. Such stocks and other securities are held for investment only and are not dealt with or traded in by the defendant. The defendant never intended at any time that such state bank shares should acquire a situs in the State of Min- 237
nesota.

All of the policies of the defendant and its activities have been and are directed by the Board of Directors from its office in Minneapolis where its corporate seal has been at all times kept. All meetings of the stockholders, directors, and of the Executive Committee of the Board of Directors have been held in Minneapolis or St. Paul, Minnesota.

238 From about the beginning of 1930 until December 31, 1931, the defendant from its office in Minneapolis periodically examined and audited the banks in which it held stock, received reports of the operations of the banks, and advised the banks with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, and at times furnished them with advertising material, and in a number of instances acted as agent of the banks in the purchase and sale of securities and commercial paper. Shortly prior to
239 January 1, 1932, the defendant caused to be organized a Minnesota corporation under the name of First Service Corporation, which is a wholly owned subsidiary. The defendant then entered into a contract with such subsidiary to perform all of the services, last above mentioned, for the banks in which the defendant owned stock. The principal office of this subsidiary is in Minneapolis, Minnesota.

The defendant has another wholly owned sub-
240 sidiary, First Minneapolis Company, a Minnesota corporation, whose principal activity is the liquidation of real estate acquired and later charged off by the First National Bank and Trust Company of Minneapolis. First Minneapolis Company is also engaged in the servicing of real estate held by member banks in trust for others and in some instances in the servicing of real estate held by individuals.

Since approximately January 1, 1932, the activities of the defendant have been strictly confined to

those of a corporation engaged merely in the holding of securities for investment. 241

II.

On May 1, 1934, First Bank Stock Corporation owned all of the shares (hereinafter referred to as state bank shares), except directors' qualifying shares, of the capital stock of certain state banking corporations organized and incorporated under the laws of Montana and North Dakota, to-wit:

Powder River County Bank, Broadus, Montana
Metals Bank & Trust Company, Butte, Montana 242
Chouteau County Bank, Fort Benton, Montana
Forsyth State Bank, Forsyth, Montana
Montana State Bank, Philipsburgh, Montana
The First State Bank, Shelby, Montana
The Northwestern Bank of Langdon, Langdon, N. D.

Benson County State Bank, Minnewaukan, N. D.

The property of said banks was not assessed or taxed in Minnesota for 1934 and none of said banks owned property situated therein in said year. Cer- 243 tificates representing the shares of the state banks were held by defendant for safekeeping during 1934 and on May 1, 1934, at its office in the city of Minneapolis, Hennepin County, Minnesota. The true and full value on May 1, 1934, of the state bank shares was one million twenty-seven thousand ninety-five and 95/100 dollars ($1,027,095.95).

III.

Pursuant to Sections 2337 to 2379, both inclu-

244 sive, Mason's Minnesota Statutes, 1927, and on or about June 8, 1934, defendant duly filed with the city assessor of Minneapolis, Hennepin County, Minnesota, a list of its moneys and credits owned by it on May 1, 1934. Said return showed an aggregate amount of taxable money and credits of two million, forty thousand, six hundred thirty-four and 05/100 dollars ($2,040,634.05), which did not include the value of the state bank shares. Thereafter, and on or about August 3, 1934, said city assessor, without the consent of defendant,
245 increased the amount of defendant's taxable money and credits aforesaid by adding thereto the true and full value aforesaid of said state bank shares. Assuming to act under and pursuant to said Sections 2337 to 2349, said city assessor thereby and thereafter threatened to subject the defendant on account of the ownership of said state bank shares to the annual tax of three (3) mills on each dollar of the true and full value thereof imposed by said Section 2337. Thereafter, a tax computed
246 under said Section 2337 of nine thousand two hundred three and 19/100 dollars ($9,203.19) was levied and assessed against defendant, of which three thousand eighty-one and 29/100 dollars ($3,081.29) was on the true and full value aforesaid of said state bank shares and for and on account of the ownership thereof by defendant on May 1, 1934. Said tax of nine thousand two hundred three and 19/100 dollars ($9,203.19) has not been paid and became delinquent on March 1, 1935.

IV.

247 Said state bank shares were assessed and taxed for the year 1934, the shares of Montana banks being assessed and taxed in Montana and the shares of North Dakota banks being assessed and taxed in North Dakota pursuant to statutes of said states. The taxes in respect of said shares levied and assessed in Montana and North Dakota have been paid and the amount of such taxes with reference to each of said state banks are as follows:

Name of Bank	Amount of Tax Assessed and Paid
Powder River County Bank, Broadus, Montana	$ 683.90
Metals Bank & Trust Company, Butte, Montana	25,432.07
Chonteau County Bank, Fort Benton, Montana	1,917.82
Forsyth State Bank, Forsyth, Montana	710.17
Montana State Bank, Philipsburgh, Montana	811.12
The First State Bank, Shelby, Montana	1,192.58
The Northwestern Bank of Langdon, Langdon, N. D.	159.72
Benson County State Bank, Minnewaukan, N. D.	309.30

248

249

V.

250 By Chapter 64, Laws of Montana, 1927, it is provided as follows:

"Chapter 64.

"An Act to Amend Section 2067 of the Revised Codes of Montana of 1921, Relating to the Assessment and Taxation of State Banks, Banking Corporations and Private Bankers and of Shares of Stock in such State Banks or Banking Corporations and Providing for the Furnishing of Certain Information to County Officials by Bank Officials.

251

"Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. That Section 2067 of the Revised Codes of Montana of 1921, be, and the same is hereby amended so as to read as follows:

"'Section 2067. Every state bank or banking corporation located and doing business in this State, and every private banker doing business in this State, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by Section 1999 of the Revised Codes of Montana of 1921, and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or

252

tures and equipment, shall be returned in the 265
name of the bank or trust company, and shall be assessed and taxed as other personal property is under this article. In determining the taxable value of the shares of stock of such corporation, the tax commissioner shall deduct the net amount of such corporation's investment in real estate and the net amount of its investment in taxed personal property from the aggregate amount of the capital stock, surplus and undivided profits, and the remainder shall be taken as the basis for valuation of 266
such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value, of such other provision of law as may be enacted at this or subsequent sessions of the legislature classifying such property for assessment purposes.

"To determine the amount which shall be considered as being invested in real estate, the tax commissioner shall deduct from the total 267
of such investment the amount of investments in real estate where the bank or loan and trust company has sold the real estate under contract whereby the purchaser agrees to pay the taxes assessed against such property.

"(4) Computation of value. The tax commissioner shall compute the total net taxable value of the capital stock of each bank or loan and trust company and shall assess such shares of capital stock and shall on or before the first

268 business day in July of each year certify such assessment to the county auditor of the county where such bank or loan and trust company is located.

"(5) Computation of net taxable value. The county auditor shall compute the net taxable value of each share of stock in any bank or loan and trust company and shall multiply such value by the number of shares held by each individual stockholder and enter such assessment against the individual stockholder; 269 provided that any solvent bank or loan and trust company may, upon written request of its cashier or other officer, have the amount of the assessment herein provided for against its stockholders assessed against the bank or loan and trust company in its corporate name and the taxes thereon may be paid as other expenses of the bank or loan and trust company are paid. The shares of capital stock in banks or loan and trust companies, not located in 270 this state, but owned in this state, shall not be required to be listed under this article.

"(6) Assessing all moneyed capital. All moneyed capital within the meaning of section fifty-two hundred nineteen (5219) of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, national bank, loan and trust company stock is taxed in the same taxing

his bank is located, within five days after de- 253
mand therefor, a statement verified by his oath showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall 254
thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior 255
report made by such bank, banking corporation or private banker to any State or Federal officer pursuant to any State or Federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

"All shares of stock in any such bank or banking corporation shall be assessed at their

full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this State, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place. The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners

of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.' 259 260

"Section 2. This Act shall be in full force and effect from and after March 1, 1927.

Approved March 8, 1927."

By Section 2115, Supplement to the 1913 Compiled Laws of North Dakota, it is provided as follows:

"Sec. 2115. (1) Bank and trust company stock; where and at what valuation to be listed. The shares of stock of every bank and of every loan and trust company located in this state whether organized under the laws of this state or the United States or of any other state or country shall be assessed to the individual stockholders or owners thereof at the place where the bank or loan and trust company is located and not elsewhere. Such shares shall be listed and assessed to the owner thereof with reference to their value on the first day of April of each year and shall be taxed at 261

262 the same rate as other property in the same taxing district is taxed.

"(2) Determination of the value of shares of capital stock. On or before the first day of May in each year, the officers of each bank or loan and trust company located in this state shall file a statement with the state tax commissioner and with the county auditor of the county where located, verified by oath, showing the amount and number of shares of capital stock of such bank, loan and trust com-
263 pany, the names and residences of the several stockholders and the amount owned by each; the amount of the corporation's surplus or reserve fund and undivided profits as of April 1st preceding. The value of each share of stock in each bank, loan and trust company, except such as are in liquidation, shall be taken to be the par value thereof, together with its pro rata share of the accumulated surplus and undivided profits. The value of each share
264 of stock in each bank which is in liquidation, shall be taken to be its pro rata share of the actual value of the assets of such bank, or loan and trust company.

"(3) Deduction of real estate and personal property to arrive at taxable value of shares of stock. Real estate owned by any bank or loan and trust company shall be assessed and taxed as other real estate is under this article. Personal property of any bank, loan and trust company, except furniture, fix-

district, and at the actual value of the moneyed capital so invested or at such percentage of actual value as may be provided by law for assessment of bank, loan or trust company stock with similar deductions for investments in real estate and taxed personal property as are allowed by this act in arriving at the net taxable value of bank stock. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized, sworn statement showing the amount of moneyed capital so used. 271 272

"(7) Refusal to furnish list of stockholders; penalty. A refusal to furnish the tax commissioner or the county auditor with the list of stockholders and the information required under this act shall be deemed a misdemeanor and any bank or loan and trust company or any officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars."

By Sections 2116 and 2117, Compiled Laws of North Dakota, 1913, it is provided as follows: 273

"Sec. 2116. Bank to keep and furnish list of stockholders. In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer au-

274 thorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office.

"Sec. 2117. Taxes on bank stock to be a lien on dividends. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or
275 officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any
276 such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale."

Since the passage and approval of said laws and during all of 1934 the same have been and now are in full force in said states. 277

VI.

The statutes and laws of the United States and of the various states of the United States, and particularly the laws and statutes of Montana, North Dakota and Minnesota, prohibit state and national banks from having an office outside the state of incorporation or of its principal office, subject such banks to regulation by the terms of the pertinent 278 statutes and by a state department of banking and by the comptroller of the currency, in the case of national banks, and require and provide for frequent periodical examinations of such banks. Such state and national banks cannot transact business outside of the state of incorporation and generally are not permitted to qualify to transact business in other states.

The business of banking is of a highly specialized character. It serves all business institutions and most individuals. The insolvency of a bank has 279 more far-reaching and disastrous effect upon the members of the community in which it is located than the insolvency of almost any ordinary commercial corporation. Substantially all of the deposits of the banks involved are from local sources and substantially all of their loans are made to local persons.

VII.

Approximately three-fourths of the states of the

United States tax bank shares on an ad valorem basis and have done so for many years. Such states uniformly provide by statute that shares of stock in banks incorporated under the laws of such states are subject to tax only in the state in which the bank is located and not elsewhere. It was not the intention of the Legislature of the State of Minnesota in the enactment of laws for the taxation of shares of stock of corporations to impose any tax upon the shares of banks incorporated in other states.

The court from the above findings of fact hereby makes the following:

Conclusions of Law.

I.

That the state bank shares owned by the defendant are not subject to taxation by the State of Minnesota.

II.

That Sections 2337 to 2349, both inclusive, Mason's Minnesota Statutes, 1927, if construed to impose a tax on the state bank shares owned by the defendant, are void because such tax would constitute a taking of defendant's property without due process of law in violation of Article I, Section 7 of the Constitution of Minnesota and the Fourteenth Amendment to the Constitution of the United States and a denial to the defendant of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

III.

That the tax in the amount of nine thousand two hundred three and 19/100 dollars ($9,203.19) levied, assessed and extended against defendant as its money and credits tax liability for the year 1934 should be abated in the amount of three thousand eighty-one and 29/100 dollars ($3,081.29), and that all interest, penalties and costs should be abated. 283

Let judgment be entered accordingly.

Dated September 18, 1935.

By the Court: 284

W. W. BARDWELL,

20 day stay granted. Judge.

(Title of Cause.)

STIPULATION FOR SETTLED CASE.

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the stipulation concerning facts filed herein at the time of the trial of this action, together with the exhibits attached thereto, contains 285 all the testimony received or offered at the trial of this cause, and that the same may be settled and allowed as the settled case herein.

FRANK J. WILLIAMS and
EDW. J. SHANNON,
Attorneys for the Plaintiff.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for the Defendant.

286 ORDER SETTLING CASE.

I hereby certify that the stipulation concerning facts filed herein at the time of the trial of this cause, together with the exhibits attached thereto, have been examined by me and found conformable to the truth and to contain all the evidence offered or introduced at the trial of this cause, and all objections, rulings, exceptions and other proceedings of such trial, and I hereby settle and allow the same as the settled case herein.

287 Dated September 30, 1935.

W. W. BARDWELL,
Judge.

(Title of Cause.)

NOTICE OF MOTION FOR AMENDMENT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW, OR IN CASE SAID MOTION IS DENIED, FOR A NEW TRIAL.

To the above named defendant and Messrs. Junell,
288 Driscoll, Fletcher, Dorsey & Barker, its attorneys:

You will please take notice: That the plaintiff in the above entitled action on the settled case and on all the files, records and proceedings herein will move the above named court at a special term thereof to be held in the court house in the city of Minneapolis, county of Hennepin, Minnesota, on the 12th day of October, 1935, at ten o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, for an order amending the

findings of fact and conclusions of law and order for judgment, heretofore made and filed herein, in the following particulars: 289

I.

That finding I of said findings of fact be stricken out and the following finding of facts substituted in lieu thereof:

"I.

First Bank Stock Corporation is a corporation organized under the laws of the State of Delaware, with its executive office in Minneapolis. During all times material, it has been and now is duly qualified to transact business in Minnesota. Shortly after its organization in 1929 it acquired all or a majority of the stock of a number of national and state banks located in the States of Minnesota, Michigan, North Dakota, South Dakota and Montana. It also caused to be organized certain other banks, the capital stock of which it owns, and it holds certain other securities. Such stocks and other securities are held for investment only and are not dealt with or traded in by the defendant. 290 291

All of the policies of the defendant and its activities have been and are directed by the Board of Directors from its office in Minneapolis where its corporate seal has been at all times kept. All meetings of the stockholders, directors and of the Executive Committee of the Board of Directors have been held in Min-

292 neapolis or St. Paul, Minnesota. The defendant keeps a complete set of books in which it records all of its transactions which are entirely separate from the books of any other corporation and which are kept at its office in Minneapolis, Minnesota.

From its directors' and executive offices in Minneapolis and St. Paul defendant has exercised a large measure of management and control of the several banks in which it owns a majority or more of stock in the following
293 particulars:

From about the beginning of 1930 until December 31, 1931, the defendant from its office in Minneapolis periodically examined and audited the banks in which it held stock, received reports of the operations of the banks, and advised the banks with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, and at times furnished them with advertising
294 material, and in a number of instances acted as agent of the banks in the purchase and sale of securities and commercial paper. Shortly prior to January 1, 1932, the defendant caused to be organized a Minnesota corporation under the name of First Service Corporation, which is a wholly owned subsidiary. The defendant then entered into a contract with such subsidiary to perform all of the services, last above mentioned, for the banks in which the defendant owned stock. The principal office of this

subsidiary is in Minneapolis, Minnesota.

The defendant has another wholly owned subsidiary, First Minneapolis Company, a Minnesota corporation, whose principal activity is the liquidation of real estate acquired and later charged off by the First National Bank and Trust Company of Minneapolis. First Minneapolis Company is also engaged in the servicing of real estate held by member banks in trust for others and in some instances in the servicing of real estate held by individuals.

Since approximately January 1, 1932, the activities of the defendant have been strictly confined to those of a corporation engaged merely in the holding of securities for investment except as above set forth."

II.

That finding VII of said findings of fact be stricken out and the following finding of facts substituted in lieu thereof:

"VII.

Approximately three-fourths of the States of the United States tax bank shares on an ad valorem basis and have done so for many years. Such States uniformly provide by statute that shares of stock in banks incorporated under the laws of such States are subject to taxation only in the place where the bank is located and not elsewhere."

III.

298 That the conclusions of law be entirely stricken out and the following substituted in lieu thereof:

"Conclusions of Law.

I.

That the state bank shares owned by the defendant have a taxable situs in the State of Minnesota and are subject to taxation therein.

II.

That the plaintiff, the State of Minnesota,
299 is entitled to judgment against the defendant for the sum of Nine Thousand Two Hundred Three and 19/100 Dollars ($9,203.19) levied, assessed and extended against the defendant as its money and credits tax liability for the year 1934, together with all accrued penalties, interest and costs thereon."

In the event the foregoing motion is denied, defendant will move the court for a new trial herein.

Each of said motions will be made upon the following grounds, each of which is to be considered
300 as repeated herein, as the basis for each thereof: That the decision of the court, findings of fact and conclusions of law heretofore made and filed herein are not justified by the evidence and are contrary to law.

FRANK J. WILLIAMS and
EDW. J. SHANNON,
Attorneys for the Plaintiff,
402 Court House,
Minneapolis, Minn.

(Title of Cause.)

301

ORDER DENYING MOTIONS.

The above entitled cause being regularly on the special term calendar of this court came duly on for hearing before the undersigned, one of the judges of said court on a motion of the plaintiff for an order amending the findings of fact, conclusions of law and order for judgment, and in the alternative for a new trial.

Messrs. Frank J. Williams and Edward J. Shannon, assistant county attorneys appeared on 302
behalf of the plaintiff, and Messrs. Junell, Driscoll, Fletcher, Dorsey and Barker appeared on behalf of defendant. After hearing the arguments of counsel and being fully advised in the matter

It is ordered that said motions be and the same hereby are in all things denied.

Dated November 12, 1935.

By the Court:

W. W. BARDWELL,
Judge. 303

304 (Title of Cause.)

NOTICE OF APPEAL.

To Messrs. Junell, Driscoll, Fletcher, Dorsey and Barker, attorneys for the above named defendant, and to George H. Hemperley, clerk of the District Court:

You will please take notice that the above named plaintiff appeals to the Supreme Court of the State of Minnesota from the order of the District Court entered herein on the 16th day of November, 1935,
305 denying plaintiff's motion for an order amending the findings of fact, conclusions of law and order for judgment, and in the alternative, for a new trial and from the whole thereof.

Dated 20th day of November, 1935.

FRANK J. WILLIAMS and
EDWARD J. SHANNON,
Attorneys for Plaintiff.

---

306 ADMISSION OF SERVICE.

Due service of the above notice of appeal admitted this 20th day of November, 1935.

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
Attorneys for the Defendant.
GEORGE H. HEMPERLEY,
Clerk of the District Court.

(Bond on appeal waived.)

[fol. 103] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

30836

1936

In the Matter of the Proceedings to Enforce Delinquent Money and Credits Taxes for 1934

STATE OF MINNESOTA, Appellant,

vs.

FIRST BANK STOCK CORPORATION, Respondent

ASSIGNMENTS OF ERROR OF APPELLANT, STATE OF MINNESOTA —Filed January 20, 1936

1. The Court erred in denying appellant's motion that finding I of the findings of fact be stricken out and the following finding substituted in lieu thereof:

"I

First Bank Stock Corporation is a corporation organized under the laws of the State of Delaware, with its executive office in Minneapolis. During all times material, it has been and now is duly qualified to transact business in Minnesota. Shortly after its organization in 1929 it acquired all or a majority of the stock of a number of national and state banks located in the States of Minnesota, Michigan, North Dakota, South Dakota and Montana. It also caused to be organized certain other banks, the capital stock of which it owns, and it holds certain other securities. Such stocks and other securities are held for investment only and are not dealt with or traded in by the defendant.

All of the policies of the defendant and its activities have been and are directed by the Board of Directors from its office in Minneapolis where its corporate seal has been [fol. 104] at all times kept. All meetings of the stockholders, directors and of the Executive Committee of the Board of Directors have been held in Minneapolis or St. Paul, Minnesota. The defendant keeps a complete set of books in which it records all of its transactions which are entirely separate from the books of any other corporation and which are kept at its office in Minneapolis, Minnesota.

From its directors' and executive offices in Minneapolis and St. Paul defendant has exercised a large measure of management and control of the several banks in which it owns a majority or more of stock in the following particulars:

From about the beginning of 1930 until December 31, 1931, the defendant from its office in Minneapolis periodically examined and audited the banks in which it held stock, received reports of the operations of the banks, and advised the banks with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, and at times furnished them with advertising material, and in a number of instances acted as agent of the banks in the purchase and sale of securities and commercial paper. Shortly prior to January 1, 1932, the defendant caused to be organized a Minnesota corporation under the name of First Service Corporation, which is a wholly owned subsidiary. The defendant then entered into a contract with such subsidiary to perform all of the services, last above mentioned, for the banks in which the defendant owned stock. The principal office of this subsidiary is in Minneapolis, Minnesota.

The defendant has another wholly owned subsidiary. First Minneapolis Company, a Minnesota corporation, whose principal activity is the liquidation of real estate acquired and later charged off by the First National Bank and Trust Company of Minneapolis. First Minneapolis Company is also engaged in the servicing of real estate held by member banks in trust for others and in some instances in the servicing of real estate held by individuals. [fol. 105] Since approximately January 1, 1932, the activities of the defendant have been strictly confined to those of a corporation engaged merely in the holding of securities for investment except as above set forth."

2. The Court erred in denying appellant's motion that finding VII of the findings of fact be stricken out and the following finding substituted in lieu thereof:

"VII

Approximately three-fourths of the States of the United States tax bank shares on an ad valorem basis and have done so for many years. Such States uniformly provide by statute that shares of stock in banks incorporated under

the laws of such States are subject to taxation only in the place where the bank is located and not elsewhere."

3. The Court erred in denying appellant's motion that the conclusions of law be entirely stricken out and the following substituted in lieu thereof:

"Conclusions of Law

I

That the state bank shares owned by the defendant have a taxable situs in the State of Minnesota and are subject to taxation therein.

II

That the plaintiff, the State of Minnesota, is entitled to judgment against the defendant for the sum of Nine Thousand Two Hundred Three and 19/100 Dollars ($9,203.19) levied, assessed and extended against the defendant as its with all accrued penalties, interest and costs thereon."
money and credits tax liability for the year 1934, together

4. The Court erred in denying appellant's motion for a new trial.

5. The decision of the Court is not justified by the evidence and is contrary to law.

[fol. 106] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

Hennepin County

Stone, J.

No. 132

30836

In re Proceedings to Enforce Delinquent Money and Credits Taxes for 1934.

STATE OF MINNESOTA, Appellant,

vs.

FIRST BANK STOCK CORPORATION, Respondent

SYLLABUS

1. Shares in the stock of corporations are contract rights and, as such, choses in action.

2. In respect to shares in foreign corporations, owned here by an inhabitant of this state, the stock certificates being in its possession here, the owner is taxable in Minnesota as for credits, under the Money and Credits Tax Law, Mason Minn. St. 1927, §§ 2337 to 2349.

3. Defendant owns here all or a majority of the stock in numerous state banks in other states. Thereby it has the control of and manages all such banks, together with numerous national banks. Its property and business, as a unit, are located in, and managed from Minnesota. Held, that defendant's bank stocks have a business situs here and that their taxation locally is not a denial of due process, even as to stocks in state banks in other states which are also taxed by the domiciliary states.

Reversed.

OPINION—Filed June 19, 1936

STONE, Justice:

First Bank Stock Corporation, to which we shall refer as defendant, prevailed below in this proceeding to enforce [fol. 107] delinquent money and credits taxes for 1934. The state appeals from an order denying its alternative motion for amended findings or a new trial.

Defendant is a Delaware corporation domiciled in this state, with its principal office here. It owns all or a majority of the stock in about 84 national and state banks in the Ninth Federal Reserve District. These are its subsidiaries, managed by it from its principal office in Minneapolis. Their stocks are not held by defendant merely for investment. They are not dealt in or traded but were acquired and are owned for the purpose of giving defendant plenary control over the banks. The subsidiaries are colloquially and politically characterized as "chain banks." They are managed, supervised, and periodically examined by defendant. It selects all their officers and dictates all their policies. Another subsidiary corporation or two are mentioned in evidence and argument, but there is nothing about them to change the essential facts concerning defendant's ownership and use of its bank stocks.

Whatever may be said of its properties separately considered, defendant's business is a very important economic unit, which, as to headquarters and management, is localized in Minnesota, wherein also are many banks, both state

and national, which it controls through stock ownership. Its corporate seal is kept at its Minneapolis office. All meetings of its stockholders, board of directors, and executive committee are held in Minneapolis or St. Paul. The certificates for its stocks in subsidiary banks are all kept at the Minneapolis office. Defendant regularly returns for taxation all its taxable money and credits, other than the stocks in state banks of other states. As to the latter, it denies that Minnesota has the power to tax them or itself as owner of them.

Presently involved are the stocks of six Montana and two North Dakota state banks. (The case is unembarrassed by any problem peculiar to the taxation of shares in national banks.) Defendant owns, as it does in most cases, all their stock, except qualifying shares in the ownership [fol. 108] of the few directors and officers necessarily resident at the domicile of each bank. Even such shares are held by the owners subject to an option in defendant to repurchase at will.

Each bank in Montana and North Dakota, together with its tangible property, is subject to taxation, and is taxed, by the domiciliary state. So also are their stock shares, even when held by non-residents.* Defendant's position, sustained below, is that again to tax the shares in the possession and ownership of defendant in Minnesota, or to tax it as the owner thereof, would be not only double taxation, but also a denial of due process of law in violation of Article 1, Section 7, of the Constitution of Minnesota, and the Due Process Clause of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

We are now dealing with a property, and not an excise tax. Hicken v. Board of Education, 153 Minn. 120, 189

---

* In Montana, the tax on both state banks and their shares is imposed and its collection provided for by Revised Codes of Montana, 1927 Supplement, § 2067; and in North Dakota, under Compiled Laws of North Dakota, 1913, (& 1925 Supplement,) §§ 215 (1) to 2117. The shares as such as well as the corporation are taxed and, as to the tax on the stock, the corporation is made liable for payment. Minnesota taxes in similar fashion "the stock of every bank and mortgage loan company" organized under its laws. Mason Minn. St. 1927, § 2026-1 to § 2029.

N. W. 709. In this state, "money and credits" are taxed under Mason Minn. St. 1927 §§ 2337-49 at a special and low rate of 3 mills on each dollar of fair cash value and are [fol. 109] exempt from other local taxation. Under § 2348, they become a part of the personal property tax of the owner with a resulting liability in personam. Needless to say, it was not intended that any money or credits (not within the express exceptions of the statute)* owned by inhabitants of this state should escape.

Defendant in its corporate person is within its jurisdiction and subject to the state's taxing power. The argument against local taxation is put upon the nature of the property and the fact that it is subject to taxation in other states. In order properly to appraise that argument, the nature of the involved property, corporate shares, must not be overlooked. That they are personal property and, as such, subject to tax laws has long been settled law.

[fol. 110] 1. Shares are "mere contract rights, or in technical language, choses in action." 1 Morawetz, Private Corporations, § 225. Hawley v. Malden, 232 U. S. 1, 58 L. ed. 477, 482. The distinction must be observed between the shares in the abstract which are intangible, "and the certificates which represent these rights." The latter "are something more. They are constantly treated as tangible property in commercial transactions and, by reason of their negotiable character, are in fact tangible property of great value, just as negotiable notes and bills are." 1 Morawetz, Private Corporations, § 226.

2. If the shares in question are not taxable to defendant locally, they would not be so in the hands of another owner even though he were an individual rather than a corpora-

---

* One of those exceptions is of "moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks." Mason Minn. St. 1927, § 2337. Whether the case is affected by that exception we have no occasion to and do not consider. It was added by amendment in 1923 (L. 1923, c. 102) and so was not in effect in 1921 and 1922, money and credits taxes for which years were the subject of decision in State v. First National Bank of St. Paul, 164 Minn. 235, 204 N. W. 874, 205 N. W. 375.

tion. If, in respect to his ownership of foreign bank shares, the owner cannot be subjected to taxation here, he might enjoy a similar immunity from contributing to the maintenance of government and its services in Minnesota in respect to his shares in all foreign corporations. The jurisdiction of Minnesota to tax at all is challenged, and the supporting argument must rest, finally, not so much upon the fact of taxation in other states as on their supposed exclusive power to tax, whether exercised or not, and in the supposed lack of power in Minnesota to tax at all.

Defendant's allegation of denial of due process, is made untenable by Hawley v. Malden, 232 U. S. 1, 58 L. ed. 477. The question there was whether the taxation of shares of stock, owned by a resident of Massachusetts, in a foreign corporation, which did no business and had no property in that state, was a denial of due process. It was decided in the negative.

Even at the time of that decision, the power it sustained had been exercised without question by most, if not all, of the states from their earliest days. Its constitutionality, [fol. 111] as observed by the supreme court, had been sustained by the repeated and numerous state decisions cited. The distinction was drawn between the property of the shareholders in their shares and that of the corporation itself. The former "may be separately taxed." The numerous decisions, which were followed, sustained the power and were ruled by "the view that the shares are personal property and, having no situs elsewhere, are taxable by the state at the owner's domicile, whether the corporation be foreign or domestic." The argument that the shares were "taxable solely in the state of incorporation" was rejected and the power of the state of the owner's domicile to tax was sustained.

Upon the question of situs we shall have more to say later, but in Hawley v. Malden, supra, the court said:

"When we are dealing with the intangible interest of the shareholder, there is manifestly no question of physical situs, so far as this distinct property right is concerned, and the jurisdiction to tax it is not dependent upon the location of the lands and chattels of the corporation."

Further, in respect to corporate shares, the court held that, as choses in action such shares "in the absence of leg-

islation prescribing a different rule • • • are appropriately related to the person of the owner, and, being held by him at his domicile, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys."

Upon the authority of Hawley v. Malden, and deciding the question strictly as one of federal constitutional law, we hold that the taxation in Minnesota as attempted under our money and credits tax law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process. Bristol v. Washington County, 177 U. S. 133, 44 L. ed. 701, 20 S. Ct. 585; New Orleans v. Stempel, 175 U. S. 309, 44 L. ed. 174, 20 S. Ct. 110; Metropolitan Life Ins. Co. v. New Orleans, 205 U. S. 395, 51 L. ed. 853, 27 S. Ct. 499.

[fol. 112] 3. The argument against application of the rule of Hawley v. Malden, supra, is that "only one state can constitutionally impose a property tax upon intangibles and as to shares of state banks such a tax may be imposed only by the state of incorporation and not by the state of domicile [of the owner of the shares,] or business situs." That proposition is put upon the authority of the more recent inheritance tax cases, (overruling Blackstone v. Miller, 188 U. S. 189, 47 L. ed. 439, 23 S. Ct. 277, and the other decisions approving it), to-wit: Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 204, 74 L. ed. 371, 50 S. Ct. 98; Baldwin v. Missouri, 281 U. S. 586, 74 L. ed. 1056, 50 S. Ct. 436; Beidler v. South Carolina Tax Commission, 282 U. S. 1, 75 L. ed. 131, 51 Sup. Ct. 54; First National Bank v. Maine, 284 U. S. 312, 76 L. ed. 313, 52 S. Ct. 174.

Inheritance taxes are excises and not levies on property. They are fixed on an event, the transfer which takes place on, and by reason of, death. The conclusion is simply that, in as much as the tax is not upon the property transferred, but rather and only an excise upon the event which transfers it, the only state having the power to make the levy is the one, and there can be but one, wherein the event, the transfer on death of the owner, takes place.

Even as to inheritance and succession taxes, the recent and controlling cases are explicitly limited so as not to apply where the property, the transfer of which is sought to be taxed, has an actual or "business situs" elsewhere than in the state of the owner's domicile. In Farmers Loan

and Trust Co. v. Minnesota, supra, first declaring the new rule, it was emphasized that none of the property, municipal bonds, "had any connection with business carried on by or for the decedent in Minnesota." (74 L. ed. 373.)

If stocks can ever have an actual or "business situs" in a state other than that of the corporation itself, there is such a situs of defendant's shares in Minnesota. "It is difficult [fol. 113] to conceive how property could be more completely localized." See De Ganay v. Lederer, 250 U. S. 376, 63 L. ed. 1042, where the "localized" securities were in the possession and management of an agent in the United States for a non-resident alien owner. We stress again the real distinction between the incorporeal rights evidenced by the stock certificates, and the stock certificates themselves, the former being intangible and the latter tangible and dealt with as such. Compare First Trust Company of St. Paul v. Matheson, 187 Minn. 468, 246 N. W. 1, holding that bonds payable to bearer are so far tangibles as to be properly subject to an action quasi in rem here. Under the rule of that case, and the others therein cited, particularly Hamilton v. Brown, 161 U. S. 256, 40 L. ed. 691, 16 S. Ct. 585, there seems to be no question that, if the stocks in question were owned by an individual resident of Minnesota, and he should die here, intestate and without heirs, Minnesota jurisdiction would be the only one capable of adjudging the escheat of the certificates and the property rights thereby evidenced.

There is another and important feature of this case, not present in the inheritance tax cases.

It is that the stocks of the eight Montana and North Dakota state banks, upon which this state seeks to levy a money and credits tax, have, by reason of their ownership and use by defendant, with the stocks in seventy-six other banks, an importance in use and value, local in nature, which they would not possess if the stock in each of defendant's subsidiary banks were considered in isolation as a unit by itself. The stocks in defendant's subsidiaries, themselves numerous and scattered widely through the Ninth Federal Reserve District, have been amalgamated into a super banking and economic unit in defendant's ownership and control. Thereby, there has arisen a new power over the banking activities and interests of a large and important area. Whatever the increment of value resulting there-

[fol. 114] from, it is undeniable that together they make a new unit of highly important and valuable property, integrated and with a situs here or nowhere.

The maxim mobilia sequuntur personam must apply to such a property or it has become a mere museum piece of ancient law. If Minnesota cannot tax the whole, it will not be taxed elsewhere except to the extent that fractions of it are separately taxed in the states wherein defendant's subsidiaries are incorporated. That process cannot touch the larger and new unit of business and value owned and operated by defendant in Minnesota. The local owner of the increment of worth added by the amalgamation will by so much escape taxation if we sustain the argument for defendant. That would not be double taxation, which defendant opposes, but an escape from taxation, which no one advocates, however much he wants it. Inherent in any theory calculated to permit large values to escape their just share of the burden of government is its own refutation.

The established local business situs of defendant's bank stocks and their unitary use here in a new integer of business and property furnish all the basis needed to support the challenged tax, for which we hold defendant liable. Like State v. Pittsburgh Plate Glass Company, 147 Minn. 339, 180 N. W. 108, the recent case of Wheeling Steel Corporation v. Fox, et al., — U. S. — (Opinion filed May 18, 1936) applies to a concrete issue the idea of a "business situs" of intangibles of a corporation outside its home state. Sustained was the claim of West Virginia "that the accounts receivable and bank deposits • • • had acquired a taxable situs" in that state, although the corporation was chartered in Delaware. "The constitutional authority of West Virginia to tax" said the court, "cannot be denied upon the ground that they [the intangibles in question] are taxable solely in Delaware. The question is whether they should be deemed to be localized in West Virginia." The decisive answer was in the affirmative. Its factual basis, summarized, was that the credits sought to be taxed in West Virginia had been created and were managed and liqui- [fol. 115] dated there as part of the business of the owner localized there.

The bank stocks presently considered were not created here, but they are owned here. More important is the fact that they are here an integrated part, and the main one,

of a distinctly localized unit of business, property and value.

Exploring further defendant's argument anent double taxation, one answer is that there is no constitutional prohibition of duplicate taxation. There is a difference between twice taxing the same event which can happen in but one state, and twice taxing the same property, once in respect to an interest, or quality, or susceptibility, especially related to one jurisdiction, and again in respect to another as clearly related to the second taxing power.

The present trend of our law is against multiple state taxation of intangibles. If "the employment of the due process clause of the Fourteenth Amendment to eliminate the multi-state taxation of intangible personalty" (Rottschaefer, State Jurisdiction to Impose Taxes, 42 Yale Law Journal 305 (307)) is to continue and evolve into a symmetrical plan barring such taxation, there must be a reexamination, and probably an end of the present practice of states taxing the shares of their corporations in the ownership of non-residents. Such levies, extra-territorial in practical effect, are an anomaly if not in fact ultra vires.

The bonds of a corporation, owned and held by non-residents at their domiciles in other states, are beyond the taxing power of the chartering state. Cleveland, Painesville & Ashtabula R. R. Co. v. Pennsylvania, 82 U. S. (15 Wall.) 300, 21 L. ed. 179. The location of the taxable interest in a chose in action should not be made to depend on any mere fiction or phrasing of an idea. The stubborn and determinative actuality is that the "right has no locality independent of the party in whom it resides." He, and he [fol. 116] alone, may give it a situs for taxation other than his own. Bristol v. Washington County, 177 U. S. 133, 44 L. ed. 701, Metropolitan Life Insurance Co. v. New Orleans, 205 U. S. 395, 51 L. ed. 853.

Stock shares no less than corporate bonds are choses in action attended by obligations of the corporation to the owners of them. Stock certificates evidence those duties as truly as do bonds the promise to pay principal and interest. In both, the corporation is the obligor, the holders the obligees. As to corporate bonds, the chartering state cannot tax them when owned beyond its own boundaries. It cannot give them a situs for taxation apart from the domicile of the owner.

How are stock and stock certificates so different that state power may do for and with them what it cannot do for and

with bonds? If it cannot by a mere legislative assertion localize the bonds for taxation, upon what theory—under what formula—may it localize the stock for the same purpose? Even if realism be frankly discarded and fictions avowedly made the media of reasoning, it is apparent that any allowable fiction that fits either bonds or stocks is equally apt for the other.

The power of the domiciliary state to subject non-resident owners of corporate stock to taxation rests upon its supposed power (sustained in Corry v. Baltimore, 196 U. S. 466, 49 L. ed. 566), in creating the corporation, to fix "the situs" of *all* its stock, wherever owned, for purposes of taxation. If it may so establish one situs, why may it not be made the only one?

If the domiciliary states have the power, by taxing the shares in their corporations, to exclude all taxation thereof by other states wherein the owners reside, why may they not do so by exempting such shares from all taxation? Suppose, for example, that Montana and North Dakota instead of taxing bank stocks, taxed only the corporations as such and expressly had declared that the shares should be exempt. It is a question of the reach of sovereign power, [fol. 117] and, whatever sovereign power may do by affirmation, it should be able to accomplish by equally significant negation.

If the home state may fix a situs for property taxation, why may it not do the same for excises? Why may it not declare that it shall be the only state to tax the transfer of stock on the death of even non-resident owners? That it cannot do so now seems to be established. It has never been suggested that the home state could declare itself the only one to take by escheat the shares of non-resident owners dying intestate and without heirs. Equally beyond the scope of legal thought, is the idea that a state may so monopolize the situs of stocks as to declare that, wherever owned, they will descend, on the death of the owner, under its own law and no other.

The domiciliary state of a corporation, of course, may tax it as a corporation. The company and its local property of all sorts are taxable in the home state. But, if that state may tax also the special property of non-residents in their shares, it is by so much taxing property and persons beyond its jurisdiction. In such case, the home state

is in fact taxing beyond its boundaries unless the foreign holders of the shares have no property therein which they can carry with them anywhere, for any purpose, beyond the territory of that state.

But, it may be rejoined, a state upon enfranchising a corporation may condition as it wishes all corporate activities and all use and ownership of its shares. So it may if there are no limits to its power. Let it be supposed there are none as to the corporation itself, which is made a legal person by and of the state of incorporation. But what of shareholders in other states? The domiciliary state cannot tax them in personam, in respect to and on their separate interests, unless it may so condition the issue of shares by the corporation. It may condition issue, transfer and ownership of shares within constitutional limits. But, is it not going beyond its jurisdiction by im- [fol. 118] posing a condition which is intended to operate, and in practice can operate, only on subjects, property and its owners, in other states?

How far may a state condition a corporation it enfranchises and the stock and stockholders therein? It may limit powers and confine their exercise to its own domain. But if it permits its corporation to go into other states, corporate action in the latter will be governed by local law. The original, domiciliary limitation of its power is congenital and inescapable. But in other respects a corporation does escape the laws of its home state whenever it becomes domiciled in another. For the home state by the act of incorporation to attempt to permit its corporations to go into others and there to deny their jurisdiction, as by resisting otherwise appropriate taxation, would be plainly ultra vires.

Suppose, for example, a state says to its corporations: "You must pay a tax on all your tangible property wherever owned; subject to that condition, go into another state and do business there." Suppose the corporation does so and acquires tangible property in another state and keeps it there, its actual physical situs and use there and there only. It cannot escape taxation there. Must it pay also at home? Obviously not. Either a state must keep its corporations at home, or, permitting them to roam into other states, must acknowledge for the laws of the latter their full reach to and effect upon all proper subjects. If

the state of incorporation cannot so condition its corporations going into other states, how may it impose similar conditions upon stockholders and their property beyond its own jurisdiction?

The recent cases prevent multi-state inheritance taxation, not because of its multiplication, but because only of the territorial limitation which prevents one state from taxing an event, such as a property transfer, which transpires beyond its own boundaries and within those, and by virtue of the laws, of another state. In that new light, the principle of Corry v. Baltimore, supra, may need reexam- [fol. 119] ination. It is not, to say the least, a symmetrical system of preventing multiple state taxation of the same economic interest, which bars such assessment of a transfer of stock and yet permits it as to the stock itself. The asymmetry results from the inclusion in the tax structure of permission to a state, in organizing a corporation, to resort to an expedient of condition or regulation which in fact projects its own jurisdiction to property and persons beyond its boundaries.

The power of the domiciliary state to tax the shares of a corporation, even when owned by non-residents, is based upon its authority "to determine the basis of organization and the liabilities of shareholders." Illustrative is the "dominant power" of Congress in the exercise of which as to national banks it "has fixed the places at which alone shares in those institutions may be taxed." Hawley v. Malden, supra, (58 L. ed. 483).

There is a vital difference between congressional power as to national banks, "dominant" in all the states and competent to fix for all the states the status of any national bank (and its shares) in all of them, and the power of a state, which can reach into no other as to anything.

The argument that state taxation of foreign held shares rests upon contract also falls short of its mark. Liberty of contract does not permit a resident of Minnesota to bargain himself or his property into exemption from Minnesota jurisdiction. Such a contract would be void as against public policy. So also would be one between the state itself and a non-resident expressly subjecting to taxation here property having a situs at the owner's domicile and subject to taxation there. How, then, can a state, if it attempts to do so even by a corporate charter, effectually

contract that it may tax persons or property beyond its jurisdiction? Certainly any contract so attempting to vest in a state an extra-territorial taxing power would fall under the condemnation of illegality.

[fol. 120] It all comes back to a question of the reach of a state's sovereign power of taxation. If it may fix for taxation, as decided in Corry v. Baltimore, supra, the situs of all stock in all its corporations, there is an end to the matter. The question stands so decided. It is not for us to determine otherwise. What we have said on the subject is intended only to stress some additional obstacles in the way of denying Minnesota's power to tax defendant's stock in the banks of other states.

State banks, we do not forget, are not wanderers from their home states. They are not authorized to do business elsewhere. But their stocks are not and cannot well be kept at home. That they cannot be taxed there when owned by non-residents, we do not attempt to decide. Neither do we suggest that as matter of present law, they cannot, or should not, be subjected to taxation both in the chartering state and also in that of the non-resident owner. We conclude only that, when owned and used in Minnesota, as defendant owns and uses those now in question, they are subject to taxation by Minnesota.

The order under review must be reversed with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision and to order judgment for the state.

So ordered.

Stone, J.

[fol. 121] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

OPINION ON PETITION FOR REHEARING—Filed October 9, 1936

STONE, Justice:

The petition of respondent First Bank Stock Corporation for a rehearing is denied. But in order to insure that certain unfounded fears thereby expressed shall not be shared by others, we append the following:

While we noted for what it was worth the distinction between stock certificates and the incorporeal property of

which they are the evidence, we did not mean even to suggest that two distinct properties are being taxed,—that the domiciliary states, Montana and North Dakota, are taxing the shares while Minnesota was attempting to reach only the certificates. We agree with counsel that "double taxation is not thus to be explained away." Our view is that if Montana and North Dakota may and do tax the shares in question, there is double taxation of the same property or interest if Minnesota also has the power to and does tax the shares.

Nor did we mean to suggest that the respondent, through the plenary character of its control of its subsidiary banks and the use it makes thereof, is going "beyond that which is proper on the part of a majority stockholder." We do regard as unimportant the fact that much of the supervision formerly exercised by respondent directly has been taken [fol. 122] over by its wholly owned subsidiary the "First Service Corporation."

It may not be necessary to add more to make plain our realization that the judgment of this court does not settle the matter. Deliberately we have tried to throw the question into bold relief. It may be necessary, as counsel suggest, to "overrule" either Corry v. Baltimore, 196 U. S. 466, 49 L. ed. 566, or Hawley v. The City of Malden, 232 U. S. 1, 58 L. ed. 477. But the choice between them, if one must be made, is for the tribunal whose judgments are supreme in the field of federal constitutional law. There also must be answered "the question expressly left undecided" in Hawley v. The City of Malden, supra, whether the chartering state may monopolize the right to tax the shares of its corporations wherever owned, by declaring that its domain shall be the exclusive situs for such taxation.

Stone, J.

[fol. 123] IN SUPREME COURT OF MINNESOTA

In the Matter of the Proceedings to Enforce Delinquent Money and Credits Taxes for 1934

No. 30836

STATE OF MINNESOTA, Appellant,

vs.

FIRST BANK STOCK CORPORATION, Respondent

JUDGMENT—Filed October 20, 1936

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things reversed with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in the decision, and to order judgment for the State. (A certified copy of the opinion filed herein is attached hereto.)

And it is further determined and adjudged that appellant herein, do have and recover of respondent herein, the sum and amount of One Hundred Thirty-three and 90/100 Dollars, ($133.90) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed Oct. 20, 1936.

By the Court.

Attest:

Russell O. Gunderson, Clerk.

[File endorsement omitted.]

Clerk's certificate to foregoing paper omitted in printing.

[fol. 124] IN SUPREME COURT OF MINNESOTA

MANDATE

THE STATE OF MINNESOTA:

To the Honorable Judge and Officers of the District Court within and for the County of Hennepin, Greeting:

Whereas, Lately in your Court, in an action therein pending, entitled In the Matter of the Proceedings to Enforce

Delinquent Money and Credits Taxes for 1934. State of Minnesota, Plaintiff and First Bank Stock Corporation, Defendant, a certain order was entered therein November 16, 1935, from which action of your Court an appeal thereafter was taken to this Court;

And Whereas, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things reversed with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in the decision, and order judgment for the State; (a certified copy of the opinion filed herein is attached hereto) and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this Remittitur.

Now Therefore, This Mandate is to you directed and certified, to inform you of these proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith Remanded to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Honorable John P. Devaney, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this October 20, 1936.

Russell O. Gunderson, Clerk of the Supreme Court,
By —— ——, Deputy.

[fol. 125] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

PETITION FOR APPEAL—Filed December 17, 1936

To the Honorable John P. Devaney, Chief Justice of the Supreme Court of the State of Minnesota:

First Bank Stock Corporation, your petitioner, respectfully shows:

1. Petitioner is the respondent in this Court in the above entitled cause.

2. The appeal in said cause was from an order entered November 12, 1935, by the District Court of Hennepin County, Minnesota, denying appellant's motion for an order amending the Findings of Fact, Conclusions of Law and Order for Judgment and, in the alternative, for a new trial.

3. On appeal from said order to the Supreme Court of the State of Minnesota, said Court being the court of last resort in the State of Minnesota in such cases, the order under review was reversed on October 20, 1936, "with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision and to order judgment for the state."

4. Said directions of the State of Minnesota appear to constitute a final judgment of said Supreme Court, within the meaning of Section 237 of the Judicial Code, as amended (U. S. C. Title 28, Sec. 344). Rio Grande Western Railway Company v. Stringham (1915), 239 U. S. 44. There is error [fols. 126-130] in said final judgment in this cause in said Supreme Court of the State of Minnesota, whereby petitioner is aggrieved, in that in the decision and judgment of said Court there was drawn in question the validity of a statute of the State of Minnesota, namely, Section 2337 of Mason's Minnesota Statutes of 1927, on the ground of its being repugnant to and violative of the due process of law and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States, and the decision and judgment of said Court were in favor of the validity of said statute.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the Assignments of Error presented herewith.

Wherefore, petitioner respectfully prays for the allowance of an appeal from said Supreme Court of the State of Minnesota to the Supreme Court of the United States in order that the decision and judgment of the Supreme Court of the State of Minnesota may be examined and reversed, and further prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Minnesota, may be sent to the Supreme Court of the United States, as provided by law.

Dated this 15th day of December, 1936.

Junell, Driscoll, Fletcher, Dorsey & Barker, A. McC. Washburn, Attorneys for Petitioner-Respondent.

[fol. 131] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed December 17, 1936

First Bank Stock Corporation, as appellant to the Supreme Court of the United States from the judgment heretofore entered herein by the Supreme Court of the State of Minnesota, assigns the following errors in the record and proceedings in this case:

I

The Supreme Court of the State of Minnesota erred in holding and deciding that the taxation, under the provisions of Section 2337 of Mason's Minnesota Statutes of 1927, by the State of Minnesota of shares of stock owned by respondent, First Bank Stock Corporation in banks organized under the laws of Montana and North Dakota was not the taxation of property having a situs without the State of Minnesota and was not a taking of First Bank Stock Corporation's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fol. 132] II

The Supreme Court of the State of Minnesota erred in holding and deciding that the taxation, under the provisions of Section 2337 of Mason's Minnesota Statutes of 1927, by the State of Minnesota of shares of stock owned by respondent, First Bank Stock Corporation, in banks organized under the laws of Montana and North Dakota was not a denial to First Bank Stock Corporation of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

III

The Supreme Court of the State of Minnesota erred in holding and deciding that the simultaneous imposition of property taxes by more than one state upon the same property of the respondent, First Bank Stock Corporation, is not a deprival of First Bank Stock Corporation's property without due process of law, in violation of the provisions of

the Fourteenth Amendment to the Constitution of the United States.

IV

The Supreme Court of the State of Minnesota erred in holding and deciding that where the state of incorporation of a bank imposes a tax upon its shares, regardless of the residence of the owner thereof, a tax upon those shares by another state is not a taking of property without due process of law and is not a denial of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

V

The Supreme Court of the State of Minnesota erred in holding and deciding that the situs of shares of stock owned [fol. 133] by respondent, First Bank Stock Corporation, on May 1, 1934, in state banks of Montana and North Dakota was in Minnesota and that the State of Minnesota had power to assess and levy a property tax upon said shares.

VI

The Supreme Court of the State of Minnesota erred in holding and deciding that shares of stock in a bank organized and existing under the laws of a state of the United States are subject to property taxation imposed by a state other than the state under whose laws the bank is organized.

VII

The Supreme Court of the State of Minnesota erred in not holding and deciding that the domicile of respondent, First Bank Stock Corporation, on May 1, 1934, was in the State of Delaware and not elsewhere.

VIII

The Supreme Court of the State of Minnesota erred in reversing the order of the District Court and in rendering judgment for the State of Minnesota and against respondent First Bank Stock Corporation.

For which errors First Bank Stock Corporation prays that the judgment of the Supreme Court of the State of Minnesota, dated October 20, 1936, in the above entitled

cause, be reviewed on appeal to the Supreme Court of the United States; that the judgment of the Supreme Court of the State of Minnesota be reversed; and that judgment be rendered abating said money and credits tax in the amount of Three Thousand Eighty-one and 29/100 Dollars ($3,081.29) and all interest, penalties, and costs.

Dated December 15th, 1936.

Junell, Driscoll, Fletcher, Dorsey & Barker, A. McC. Washburn, Attorneys for Respondent.

[fols. 134-142] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 17, 1936

The petition of First Bank Stock Corporation for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Minnesota, and the Assignments of Error filed therewith and the record of said cause having been considered, it is:

Ordered That an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Minnesota, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Minnesota prepare and certify a transcript of the record and proceedings in said cause and transmit the same to the Supreme Court of the United States within thirty (30) days from the date hereof.

It is Further Ordered That First Bank Stock Corporation give good and sufficient surety for costs on appeal in the sum of Five Hundred Dollars ($500.00).

The said petitioner, First Bank Stock Corporation, now presenting a bond in the sum of Five Hundred Dollars ($500.00), with good and sufficient surety, it is

Ordered that said bond be and is hereby approved.

Dated at St. Paul, Minnesota, this 15th day of Dec., 1936.

John P. Devaney, Chief Justice of the Supreme Court of the State of Minnesota.

[fol. 143] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 144] SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS ON WHICH IT INTENDS TO RELY AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed January 12, 1937

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this Court for reversal of the judgment of the Supreme Court of the State of Minnesota are as follows:

1. The invalidity, under the due process of law and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States, of the application of Section 2337 of Mason's Minnesota Statutes of 1927 to shares of stock owned by appellant in state banks of Montana and North Dakota.

2. Error in holding that the simultaneous imposition by more than one state of property taxes upon the same property of appellant is not a deprival of appellant's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. Error in holding that where the state of incorporation of a bank imposes a tax upon its shares, regardless of the residence of the owner thereof, a tax upon those shares by another state is not a taking of property without due process of law and is not a denial of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

[fols. 145-146] 4. Error in holding that the situs of shares of stock owned by appellant on May 1, 1934, in state banks of Montana and North Dakota was in Minnesota and that the State of Minnesota had power to assess and levy a property tax upon said shares.

5. Error in holding that shares of stock in a bank organized and existing under the laws of a state of the United States are subject to property taxation imposed by a state other than the state under whose laws the bank is organized.

6. Error in not holding that the domicile of appellant on May 1, 1934, was in the State of Delaware and not elsewhere.

7. Error in rendering judgment reversing the order of the District Court denying the motion of the State of Minnesota for amended Findings of Fact and Conclusions of Law and, in the alternative, for a new trial.

Appellant further represents that the whole of the record, as filed, with the exception of the bond, citation upon this appeal, and the praecipe, is necessary for the consideration of the case.

However, being advised that, in view of the fact that this appeal and the appeal in No. 648 are in the same case, it is permissible to have the records of both appeals printed under one cover, and in view of the Stipulation filed herewith entered into by the parties hereto by their respective counsel of record, appellant respectfully requests that the entire record in this appeal be printed in full and that all of that part of the record in the appeal in No. 648, commencing after page 124 of said original record, whereon appears the mandate of the Supreme Court of the State of Minnesota, and continuing to the end of said record be printed preceded by a notation in substantially the following form:

"Note.—The preceding portion of the record in appeal No. 648 is identical with that part of the record in appeal No. 647, commencing from the beginning and continuing to and including page 124 of said original record, whereon appears the mandate of the Supreme Court of the State of Minnesota, dated October 20, 1936. It is therefore omitted in printing."

Respectfully submitted, Leland W. [copy illegible], Joseph H. Colman. A. McC. Washburn.

Service of the foregoing statement and designation is hereby admitted this 4 day of January, 1937.

William S. Erwin, [copy illegible], Frank J. Williams, Attorney for Respondent.

[fol. 147] [File endorsement omitted.]

Endorsed on cover: File No. 41,187. Minnesota Supreme Court. Term No. 647. First Bank Stock Corporation, Appellant, vs. State of Minnesota. Filed January 12, 1937. Term No. 647, O. T., 1936.

FILED
JAN 12 1937

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 647

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT AS TO JURISDICTION.

A. McC. Washburn,
John Junell,
Clark R. Fletcher,
Leland W. Scott,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	2
Date of the judgment sought to be reviewed	3
Date of the application for appeal	3
Nature of the case	3

Table of Cases Cited.

First Bank Stock Corporation v. *Minnesota*, 267 N. W. 519	4
Rio Grande Western Railway Company v. *Stringham*, 239 U. S. 44	5

Statutes Cited.

Constitution of the United States, 14th Amendment	4
Judicial Code, Section 237, as amended (28 U. S. C. 344)	1, 3, 5
Mason's Minnesota Statutes of 1927, Section 2089	3
Section 2337	2, 3

IN SUPREME COURT, STATE OF MINNESOTA

1936.

No. 30836

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

STATE OF MINNESOTA,

Appellant,

vs.

FIRST BANK STOCK CORPORATION,

Respondent.

STATEMENT DISCLOSING BASIS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW ON APPEAL THE JUDGMENT OF THE SUPREME COURT OF THE STATE OF MINNESOTA.

Now comes First Bank Stock Corporation, by its counsel of record, and respectfully shows:

1. The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States to review on appeal the judgment of the Supreme Court of the State of Minnesota:

Section 237 of the Judicial Code, as amended, U. S. C. Title 28, Section 344, providing:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could

be had, • • • where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties or law of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon an appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a Court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

2. The statute of the State of Minnesota the validity of which is involved:

Mason's Minnesota Statutes of 1927, Section 2337, providing:

"As used in this section of [the act] the word 'money' means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word 'credits' means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state.

"As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three (3) mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, nor to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309 (2322-2330), General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national

banks; provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."

3. The date of the judgment sought to be reviewed: October 20, 1936.

4. The date upon which the application for appeal is presented: December 15, 1936.

5. The nature of the case:

The case is a controversy concerning the validity of taxes assessed by the City Assessor of the City of Minneapolis, Hennepin County, Minnesota, upon shares of stock, owned by petitioner, in Montana and North Dakota State banks.

6. The Court rulings bringing the case within the jurisdictional provision relied upon, namely, Section 237 of the Judicial Code (U. S. C. Title 28, Section 344):

(a) Trial.—An answer to the certification, to the Clerk of the District Court of Hennepin County, Minnesota, of the taxes in controversy was filed with said Clerk by petitioner, all according to the provisions of Section 2089 of Mason's Minnesota Statutes of 1927, as amended. Said answer alleged that the application of said Section 2337 of Mason's Minnesota Statutes of 1927 to shares of stock owned by petitioner in Montana and North Dakota State banks was invalid because it constituted a deprival of petitioner's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and because it denied to petitioner the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States. The trial court made

conclusions of law that said Section 2337, if construed to impose a tax on the shares of stock in state banks owned by petitioner, was void because it constituted a taking of petitioner's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and because it constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States; that the tax assessed against petitioner should be abated in the amount of Three Thousand Eighty-one and 29/100 Dollars ($3,081.29); and that all interest, penalties and costs should be abated. An order that judgment be entered accordingly was issued. The State's motion for amended findings and conclusions or, in the alternative, for a new trial, was denied.

(b) The appeal to the Supreme Court of the State of Minnesota. The State's appeal from the denial of said motion to the Supreme Court of the State of Minnesota resulted in a reversal of said order by said Supreme Court, — Minn. —, 267 N. W. 519, on June 19, 1936, the court finding the application of the statute valid and saying specifically, page 522 of 267 N. W.:

> "• • • deciding the question strictly as one of Federal constitutional law, we hold that the taxation in Minnesota as attempted under our money and credits law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process."

The court concluded its opinion by saying, page 526 of 267 N. W.:

> "The order under review must be reversed, with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision, and to order judgment for the state. • • •"

Petitioner's petition for rehearing was denied by said Supreme Court of the State of Minnesota on the 9th day of October, 1936. On October 20, 1936, judgment was entered by said Supreme Court of the State of Minnesota reversing the order under review "with directions to amend the findings of fact and conclusions of law in accordance with the views expressed in this decision, and to order judgment for the State." Said judgment of said Supreme Court of the State of Minnesota appears to be a final judgment, within the meaning of Section 237 of the Judicial Code, as amended. (U. S. C. Title 28, Section 344). *Rio Grande Western Railway Company* v. *Stringham* (1915), 239 U. S. 44.

There is, thus, involved a final judgment of the highest court of the State of Minnesota, in which a decision in the suit could be had, where is drawn in question the validity of a statute of that State on the ground of its being repugnant to the Constitution of the United States; the decision was in favor of the statute's validity. The requirements of Section 237 of the Judicial Code (U. S. C. Title 28, Section 344), *supra*, are satisfied.

Respectfully submitted,

JUNELL, DRISCOLL, FLETCHER,
DORSEY & BARKER,
A. McC. WASHBURN,
Counsel for Petitioner-Respondent.

CLERK'S NOTE.—The opinions of the Court below are printed and appended to the Jurisdictional Statement in the companion case No. 648.

FILE COPY

FEB 23 1937

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 647.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

APPELLANT'S BRIEF.

JOHN JUNELL,
CLARK R. FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant,
1300 First Nat'l-Soo Line Building,
Minneapolis, Minnesota.

Of Counsel:
JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, FLETCHER, DORSEY, BARKER & COLMAN.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

INDEX.

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	3
Position of Appellant	3
Statutes Involved	4
Statement of the Case	4
Specification of Errors	6
Summary of Argument	8
Argument	10
I. (a) Only one state can constitutionally impose a property tax upon intangibles	10
(b) In the case of state bank shares, it is the state of incorporation of the bank which can impose a property tax, and not the state of domicile of the shareholder or of the business situs of the shares	15
II. Appellant's state bank shares have a business situs in the respective states of incorporation, and the taxing jurisdiction which is both the state of incorporation and of business situs will be preferred over the jurisdiction in which the owner is domiciled	25
Conclusion	31
Appendix	33

CASES CITED.

Page

Baldwin vs. Missouri (1930), 281 U. S. 586 10
Beidler vs. South Carolina Tax Commission (1930), 282 U. S. 1 ... 10
Bemis Bro. Bag Co. vs. Wallace (1936), 197 Minn. ..., 266 N. W. 690 31
Buck vs. Beach (1907), 206 U. S. 392 28
Citizens National Bank vs. Durr (1921), 257 U. S. 99 14
S. H. Clausin & Co. vs. Wallace (1936), 197 Minn. ..., 266 N. W. 690 31
Commonwealth vs. Appalachian Electric Power Co. (1932), 159 Va. 462, 166 S. E. 461, Cert. Den. 288 U. S. 613 12
Corry vs. Baltimore (1905), 196 U. S. 466 ..... 9, 23, 24
Cream of Wheat Company vs. Grand Forks (1920), 253 U. S. 325 .. 14
De Ganay vs. Lederer (1918), 250 U. S. 376 28
Farmers Loan & Trust Co. vs. Minnesota (1930), 280 U. S. 204 ... . 10, 17, 23
First National Bank vs. Anderson (1926), 269 U. S. 341 21
First National Bank of Boston vs. Maine (1932), 284 U. S. 312 ... . 9, 10, 17, 22
Hawley vs. City of Malden (1914), 232 U. S. 1 ..... 9, 24
Hill vs. Carter (C. C. A. 9, 1931), 47 Fed. (2d) 869, Cert. Den. 284 U. S. 625 28
Iowa-Des Moines National Bank vs. Bennett (1931), 284 U. S. 239 . 21
Johnson Oil Refining Company vs. Oklahoma (1933), 290 U. S. 158 16
Miami Coal Company vs. Fox (1931), 203 Ind. 99, 176 N. E. 11 ... 13
People ex rel Whitney vs. Graves (1937), ... U. S. 9, 14, 23
Rio Grande Western Railway Company vs. Stringham (1915), 239 U. S. 44 2
Rogers vs. Hennepin County (1916), 240 U. S. 184 ..... 9, 23
Senior vs. Braden (1935), 295 U. S. 422 ..... 14, 17
Smith vs. Ajax Pipe Line Co. (C. C. A. 8, 1937), ... Fed. (2d) ... 14
State vs. First Bank Stock Corporation (1936), ... Minn. ..., 267 N. W. 519, 269 N. W. 37, 270 N. W. 574 ..... 10, 27, 30
State vs. Great Northern Railway Company (1918), 139 Minn. 469, 167 N. W. 297 28
State vs. Harrington (1923), 68 Mont. 1, 217 Pac. 681 28
Tappan vs. Merchants National Bank (1873), 19 Wallace 490 18
Wheeling Steel Corporation vs. Fox (1936), 298 U. S. 193 .... 8, 10, 12, 14, 15, 16, 24, 29

STATUTES CITED.

Page

Judicial Code, Section 237 2
National Banking Act, 13 Stat. 99 22
Revised Statutes, Section 5219 as amended; U. S. Code, Title 12, Section 548, as amended 9, 20, 21
Mason's Minnesota Statutes of 1927, Section 2021 30
Mason's Minnesota Statutes of 1927, Section 2337 ..... 2, 4, 5, 6, 7, 33
Revised Codes of Montana of 1921, as amended, Section 2067 ..... 4, 10, 33
Compiled Laws of North Dakota (1913), as amended, Sections 2115(1) to 2117 ..... 4, 10, 36

ARTICLES CITED.

Rottschaefer, **State Jurisdiction to Impose Taxes** (1933), 42 Yale Law Journal 305 12

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 647.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

APPELLANT'S BRIEF.

OPINIONS BELOW.

No written opinion was rendered by the trial court in this case. The Supreme Court of Minnesota rendered three opinions. One of these, following oral argument, was handed down June 19, 1936, and is reported in .... Minn. ...., 267 N. W. 519 (R. 105-117). The second opinion was rendered October 9, 1936, in denying appellant's petition for reargument, and is reported in .... Minn. ...., 269 N. W. 37 (R. 117-118). The third, a *per curiam* opinion, was rendered December 11, 1936, upon the second appeal to the Supreme Court of Minnesota, and is reported in .... Minn. ...., 270 N. W. 574.

JURISDICTION.

The jurisdiction of this Court rests upon the provisions of Section 237 of the Judicial Code, as amended (U. S. C., Title 28, Section 344). This appeal is from a judgment* of the Supreme Court of the State of Minnesota reversing with directions an order entered by the District Court of Hennepin County, Minnesota, denying the alternative motion of the appellee for amended findings or for a new trial. The Minnesota Supreme Court held that the application of Section 2337, *Mason's Minnesota Statutes of 1927,* to shares of state bank stock owned by appellant did not deprive appellant of his property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Thus, there is involved a final judgment of the highest court of the State of Minnesota in which a decision in the suit could be had, where is drawn in question the validity of a statute of that state on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of the validity of the statute.

The jurisdiction of this Court, resting upon Section 237 of the Judicial Code, as amended, is therefore established.

---

*The finality of this judgment, within the meaning of the cited section of the Judicial Code, is established by **Rio Grande Western Railway Company vs. Stringham** (1915), 239 U. S. 44, 47, and was necessarily recognized by this Court in its refusal to note jurisdiction in the companion appeal taken in this case (February 1, 1937), . U. S. ....

QUESTIONS PRESENTED.

The questions presented by this appeal are:

I. (a) Can more than one state constitutionally impose a property tax on state bank shares;

(b) If only one state can so tax, is it the state of incorporation of the state bank on the one hand, or the state of domicile of the shareholder or the state within which the shares have a business situs on the other hand, which can impose the tax; and

II. Under the facts of this case, have appellant's state bank shares a situs for tax purposes in the states of incorporation of the banks or in Minnesota?

POSITION OF APPELLANT.

The appellant contends that only one state can constitutionally impose a property tax on intangibles and that, in the case of state bank shares, it is the state of incorporation of the bank which can impose the tax, and not the state of domicile of the shareholder or of the business situs of the shares. Appellant further contends that the shares of stock it holds in state banks located without Minnesota have a business situs, if any, at the location of the banks and not in Minnesota.

It is the position of appellant that the Minnesota statute, as construed by the Minnesota Supreme Court to impose a property tax upon appellant's shares of stock in banks organized under the laws of foreign states, is, for the above reasons, unconstitutional under the Fourteenth Amendment to the Constitution of the United States. Appellant does not

here contend that the Minnesota statute is unconstitutional in any way other than in its application to shares of stock in foreign state banks.

STATUTES INVOLVED.

Section 2337, *Mason's Minnesota Statutes of 1927,* is the statute the validity of which is here questioned.

Sections 2115 (1) to 2117, Compiled Laws of North Dakota (1913), as amended (R. 7-13), and Section 2067, Revised Codes of Montana of 1921, as amended (R. 4-7), are the statutes under which North Dakota and Montana have imposed property taxes upon the state bank shares here involved.

All the above statutes are printed in the Appendix to this brief (pages 33 to 40).

STATEMENT OF THE CASE.

First Bank Stock Corporation, the appellant, is a Delaware corporation duly qualified to transact business in the State of Minnesota (R. 15). In 1934 appellant owned a majority of the shares of some eighty-four banks, state and national, located in the Ninth Federal Reserve District (R. 22). Among those banks were certain state banking corporations organized under the laws of Montana and North Dakota (R. 15, 2). None of these banks owned property in Minnesota (R. 15, 2) or did business therein (R. 28). *The statutes of both Montana and North Dakota provide that shares of banks organized thereunder are subject to tax at the location of the banks and not elsewhere* ((R. 15, 6, 8); Compiled Laws of North Dakota (1913), as amended, Secs. 2115 (1)-2117; Revised Codes of Montana of 1921, as amended, Sec. 2067 (Appendix, pages 35, 36)). Accordingly, the states of Montana and North Dakota for the year 1934 imposed property taxes

upon appellant's shares of stock in banks organized under their respective laws. These taxes in the aggregate amounted to $31,216.68 and were paid by appellant (R. 17).

Similarly, pursuant to the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927* (Appendix, page 33), the State of Minnesota for the same year, 1934, assessed against appellant a property tax upon appellant's same shares in said Montana and North Dakota state banks (R. 16). The validity of this assessment is the matter now before this Court.

Thirty-four states of the United States levy ad valorem taxes on shares of banks organized under their laws, regardless of the residences of the owners of those shares (R. 34, 35-59). The statutes of the United States and of the various states of the United States, and particularly the statutes of the states of Montana, North Dakota and Minnesota, prohibit state and national banks from having an office outside the state of incorporation or of its principal office; subject such banks to regulation by the terms of pertinent statutes, and by a State Department of Banking and by the Comptroller of the Currency, in the case of national banks; and require and provide for frequent periodical examination of such banks. Such state and national banks cannot transact business outside the state of incorporation and generally are not permitted to qualify to transact business in other states (R. 28).

The business of banking is of a highly specialized character. It serves all business institutions and most individuals. The insolvency of a bank has more far-reaching and disastrous effect upon the members of the community in which it is located than the insolvency of almost any commercial corporation. Substantially all the deposits of the Montana and North Dakota banks involved are from

local sources and substantially all their loans are made to local persons (R. 28).

No dispute exists as to the value of the Montana and North Dakota bank shares assessed or as to the amount of the Minnesota assessment thereupon, if it be held that that assessment by Minnesota is constitutional.

Since the facts concerning appellant's activities in Minnesota are immaterial to the consideration of appellant's first constitutional argument, viz., that only one state can constitutionally impose a property tax and that in the case of state bank shares such state is the state of incorporation of the bank, appellant does not at this point set forth the facts concerning such activities. A statement thereof, however, will be found beginning on page 25 of this brief preceding appellant's argument that its shares in Montana and North Dakota state banks have a situs for tax purposes in the respective states of incorporation of the banks.

SPECIFICATION OF ERRORS.

The appellant specifies the following assigned errors:

1. The Supreme Court of the State of Minnesota erred in holding and deciding that the taxation, under the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927*, by the State of Minnesota of shares of stock owned by appellant, First Bank Stock Corporation, in banks organized under the laws of Montana and North Dakota was not the taxation of property having a situs without the State of Minnesota and was not a taking of First Bank Stock Corporation's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

2. The Supreme Court of the State of Minnesota erred in

holding and deciding that the taxation, under the provisions of Section 2337 of *Mason's Minnesota Statutes of 1927*, by the State of Minnesota of shares of stock owned by appellant, First Bank Stock Corporation, in banks organized under the laws of Montana and North Dakota was not a denial to First Bank Stock Corporation of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. The Supreme Court of the State of Minnesota erred in holding and deciding that the simultaneous imposition of property taxes by more than one state upon the same property of the appellant, First Bank Stock Corporation, is not a deprival of First Bank Stock Corporation's property without due process of law, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

4. The Supreme Court of the State of Minnesota erred in holding and deciding that where the state of incorporation of a bank imposes a tax upon its shares, regardless of the residence of the owner thereof, a tax upon those shares by another state is not a taking of property without due process of law and is not a denial of the equal protection of the laws, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States.

5. The Supreme Court of the State of Minnesota erred in holding and deciding that the situs of shares of stock owned by appellant, First Bank Stock Corporation, on May 1, 1934, in state banks of Montana and North Dakota was in Minnesota and that the State of Minnesota had power to assess and levy a property tax upon said shares.

6. The Supreme Court of the State of Minnesota erred

in holding and deciding that shares of stock in a bank organized and existing under the laws of a state of the United States are subject to property taxation imposed by a state other than the state under whose laws the bank is organized.

7. The Supreme Court of the State of Minnesota erred in not holding and deciding that the domicile of appellant, First Bank Stock Corporation, on May 1, 1934, was in the State of Delaware and not elsewhere.

8. The Supreme Court of the State of Minnesota erred in reversing the order of the District Court and in rendering judgment for the State of Minnesota and against appellant, First Bank Stock Corporation.

SUMMARY OF ARGUMENT.

I. (a) Only one state can constitutionally impose a property tax upon intangibles.

Following the doctrine of the recent inheritance tax cases in this Court, the case of *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, held that intangibles enjoy an immunity against property taxation at more than one place.

(b) In the case of state bank shares, it is the state of incorporation of the bank which can impose a property tax, and not the state of domicile of the shareholder or of the business situs of the shares.

The inheritance tax cases are distinguishable.

State bank shares are highly localized in the state of incorporation and practical considerations of wisdom, convenience and necessity require them to be taxed there. Some three-fourths of the states tax shares of banks located therein on an ad valorem basis, whether or not owned by residents. Ad valorem taxation of national bank shares will be

invalid under Section 5219 of the Revised Statutes if a different rule is applied to state bank shares. The only property tax which the state of incorporation in fact, though not in law, can collect from its banks, is upon the bank's shares. Congress has declared that practical considerations require property taxation of national bank shares at the location of the bank, and not elsewhere. As stated in *First National Bank of Boston vs. Maine* (1932), 284 U. S. 312, selection of the state of incorporation is fortified by the laws of the thirty-four states which provide for ad valorem taxation at the location of the banks and not elsewhere. Any other rule introduces a fortuitous element of inequality (the relative tax burdens at the location of the bank and elsewhere) in the long standing policy of placing state and national banks on an equal footing as to taxation. Shares of state banks are as much localized as memberships in grain and stock exchanges. See *Rogers vs. Hennepin County* (1916), 240 U. S. 184; *People ex rel. Whitney vs. Graves* (1937), ... U. S. .....

The question is an open one in this Court:

Corry vs. Baltimore (1905), 196 U. S. 466.

Hawley vs. City of Malden (1914), 232 U. S. 1.

II. Appellant's state bank shares have a business situs in the respective states of incorporation, and the taxing jurisdiction which is both the state of incorporation and of business situs will be preferred over the jurisdiction in which the owner is domiciled.

ARGUMENT.

I. (a) Only One State Can Constitutionally Impose a Property Tax Upon Intangibles.

The tax which the State of Minnesota in this case is seeking to impose is a property and not an excise tax. *State of Minnesota vs. First Bank Stock Corporation* (1936), ... Minn. ...., 267 N. W. 519, 521 (R. 107). The taxes imposed upon these bank shares by the States of Montana and North Dakota are also property taxes. Compiled Laws North Dakota (1913), as amended, Sections 2115 (1) to 2117; Revised Codes of Montana of 1921, Section 2067, as amended. Double taxation, therefore, exists if the taxes collected by Montana and North Dakota and the Minnesota tax here in question are all constitutionally imposed. *State vs. First Bank Stock Corporation* (1936), ... Minn. ...., 269 N. W. 37 (R. 118).

Until recent years it was the accepted doctrine sustained by many decisions of this Court that intangible personal property could constitutionally be subjected to a property tax by more than one state. Foreshadowed, however, by the recent series of inheritance tax cases,* this Court, in *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, clearly and unequivocally held that intangibles are subject to a property tax by one jurisdiction only. In that case this Court stated (298 U. S. 208):

> "First.—The tax is not a privilege or occupation tax. It is not a tax on net income. See *Hans Rees' Sons vs. North Carolina,* 283 U. S. 123, 133. It is an *ad valorem* property tax. We have held that it is essential to the

---

*Farmers Loan & Trust Co. vs. Minnesota (1930), 280 U. S. 204;
Baldwin vs. Missouri (1930), 281 U. S. 586;
Beidler vs. South Carolina Tax Commission (1930), 282 U. S. 1;
First National Bank of Boston vs. Maine (1932), 284 U. S. 312.

validity of such a tax, under the due process clause, that the property shall be within the territorial jurisdiction of the taxing state. This rule receives its most familiar illustration in the case of land. The rule has been extended to tangible personal property which is thus subject to taxation exclusively in the State where it is permanently located, regardless of the domicile of the owner. *Union Refrigerator Transit Co. vs. Kentucky,* 199 U. S. 194, 204, 206; *Frick vs. Pennsylvania,* 268 U. S. 473, 489. We have said that the application to the States of the rule of due process arises from the fact 'that their spheres of activity are enforced and protected by the Constitution and therefore it is impossible for one State to reach out and tax property in another without violating the Constitution.' *United States vs. Bennett,* 232 U. S. 299, 306. Compare *Burnet vs. Brooks,* 288 U. S. 378, 401. When we deal with intangible property, such as credits and choses in action generally, we encounter the difficulty that by reason of the absence of physical characteristics they have no situs in the physical sense, but have the situs attributable to them in legal conception. Accordingly we have held that a State may properly apply the rule *mobilia sequuntur personam* and treat them as localized at the owner's domicile for purposes of taxation. *Farmers Loan and T. Co. vs. Minnesota,* 280 U. S. 204, 211. And having thus determined 'that in general intangibles may be properly taxed at the domicile of their owner,' we have found 'no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.' *Id.,* p. 212. The principle thus announced in *Farmers Loan & T. Co. vs. Minnesota,* has had progressive appli-

cation. *Baldwin vs. Missouri*, 281 U. S. 586; *Beidler vs. South Carolina Tax Commission*, 282 U. S. 1; *First Nat. Bank vs. Maine*, 284 U. S. 312, 328, 329."

Further, in the *Wheeling Steel Corporation* opinion (298 U. S. 214, 215, and 216), this Court pointed out that the West Virginia statute, as construed by the Supreme Court of that state, permitted the deduction of intangible property assessed for taxation in Ohio. After stating that the record showed no facts establishing the situs of any other intangible property of the corporation in any state other than West Virginia, the opinion states (298 U. S. 216):

"The decision in the instant case, as we have seen, is not that the statutes require taxation in West Virginia of all of the intangibles of appellant, without due regard to the place where they may properly be deemed to be localized, but only of such intangibles as upon the facts and the law, according to the course of business, may be deemed within the jurisdiction of the state."

The inevitability of the doctrine of the *Wheeling Steel Corporation* case was recognized prior to that decision. See *Rottschaefer, State Jurisdiction to Impose Taxes* (1933), 42 Yale Law Journal, 305 at pages 311, 320-322.

Following the inheritance tax cases in this Court, courts in recent years have held that the Fourteenth Amendment to the United States Constitution prevents double property taxation of intangibles.

In the case of *Commonwealth vs. Appalachian Electric Power Co.* (1932), 159 Va. 462, 166 S. E. 461, certiorari denied (1933), 288 U. S. 613, a Virginia corporation owned certain bonds issued by its subsidiary corporations and had deposited them with a New York trust company as trustee under a trust indenture in the usual form securing an issue

of bonds of the Virginia corporation. The State of Virginia imposed a property tax on the Virginia corporation because of its ownership of such bonds. The State Supreme Court affirmed the decision of the trial court directing a refund of that tax. The Court cited the United States Supreme Court inheritance tax cases above mentioned and held that only one state could impose a property tax and that, under the circumstances of the case, the State of New York and not the State of Virginia had the power to impose that tax, saying (166 S. E. 463):

> "The conclusion from these opinions summarized by counsel for petitioner seem inescapable: (1) That no property can be subjected to taxation by more than one state; (2) that this rule likewise applies to a tax on inheritances; (3) that the tax situs of tangibles (like real estate) is in the state where they are located, the fiction of *mobilia sequuntur personam* being no longer applicable to tangibles; (4) that, where intangibles form the basis of an inheritance tax, this fiction applies, and, such tax is properly imposed in the state of the domicile of the decedent; (5) that, where intangibles are sought to be taxed, the fiction of *mobilia sequuntur personam* may be applied, but this fiction must give way to the fact of legal title, possession, and control in another state."

In the case of *Miami Coal Company vs. Fox* (1931), 203 Ind. 99, 176 N. E. 11, the Court held that a property tax could not, under the Fourteenth Amendment, be imposed constitutionally upon an Indiana corporation's property having a situs in Illinois. The case involved an Indiana corporation engaged in the business of mining and selling coal. Its mines were located in Indiana but its sole business in that state was the mining and shipping of coal. All its coal

was sold through its office in Chicago, where all collections were made and all bills paid. Its accounts receivable were taxed in Illinois and the Court held invalid the attempt of the State of Indiana to impose a property tax on those accounts receivable, the accounts receivable not being within the jurisdiction of Indiana.

In *Smith vs. Ajax Pipe Line Co.* (C. C. A. 8th, January 22, 1937, and not yet officially reported), the Court held that but one situs for the taxation of intangibles exists, citing the *Wheeling Steel Corporation* case, *Senior vs. Braden* (1935), 295 U. S. 422, *infra*, and the inheritance tax cases.

Many of the earlier decisions of this Court unequivocally state that the Fourteenth Amendment does not guarantee exemption from double property taxation. *Cream of Wheat Company vs. Grand Forks* (1920), 253 U. S. 325; *Citizens National Bank vs. Durr* (1921), 257 U. S. 99. All these cases, however, must be regarded in the light of the doctrine laid down by the inheritance tax cases and as overruled by *Wheeling Steel Corporation vs. Fox, supra.* In commenting on *Citizens National Bank vs. Durr, supra*, in the case of *People ex rel. Whitney vs. Graves,* ....U. S..... (decided by this Court on January 4, 1937, and not yet officially reported), this Court stated that what the Court there said must be read in the light of the inheritance tax cases and the *Wheeling Steel Corporation* case.

The Supreme Court of Minnesota in its first opinion in this case (267 N. W. 519, 526, (R. 117)) expressly held that it did not determine this constitutional question of double taxation. That opinion was written before the decision of this Court in the *Wheeling Steel Corporation* case. The appellant in its petition for reargument to the Minnesota Supreme Court pointed out that this constitutional question had been authoritatively determined by the decision in the

Wheeling Steel Corporation case. However, the two later opinions in this case do not mention the *Wheeling Steel Corporation* case and the decision of the Minnesota Supreme Court is, therefore, based on the doctrine that double property taxation *is* constitutional and is not based on the proposition that in choosing between the state of incorporation on the one hand and the state of domicile or business situs on the other hand, the state of incorporation is not to be preferred.

We respectfully submit that the Supreme Court of the State of Minnesota erred in its holding that double property taxation is not forbidden by the Fourteenth Amendment to the Constitution.

I. (b) In the Case of State Bank Shares, It Is the State of Incorporation of the Bank Which Can Impose a Property Tax, and Not the State of Domicile of the Shareholder or of the Business Situs of the Shares.

Accepting the rule that only one state can constitutionally impose a property tax on intangibles, the question remains as to which state has such power to tax *state bank shares*. This requires a selection between the state of incorporation, the state of domicile of the shareholder, and the state in which the shares may have a business situs. For the reasons hereinafter set forth, we believe that it is the state of incorporation and not the state of the domicile of the shareholder or of the business situs of the shares which has the power to impose such a tax. We here assume that the state of incorporation of the bank is not the state in which is located the business situs of the bank shares, although later in this brief we believe that we have sub-

stantiated that, in the case at bar, the business situs of the state bank shares is in the state of incorporation.

The inheritance tax cases establish the rule that, with an exception in favor of the state of business situs, only the state of domicile of the owner can impose an inheritance tax upon intangibles. By no means does it follow that the state of domicile or the state of business situs is the one which in all cases can constitutionally impose a *property* tax. Jurisdiction to impose an *inheritance* tax depends on which state has jurisdiction of the transfer of the property at death, and such state, of course, in the case of intangibles, is the state of the domicile of the holder or of the business situs of the intangibles. Jurisdiction to impose a *property* tax, on the other hand, depends on the place where the property is habitually employed, and such jurisdiction must be consistent with the like jurisdiction of other states. *Johnson Oil Refining Company vs. Oklahoma* (1933), 290 U. S. 158.

In the case at bar the foreign bank shares were not in any manner or at any time employed in Minnesota. The jurisdiction of Minnesota must be determined on a basis which is consistent with the jurisdiction of the states of incorporation of the banks. Here the states of incorporation have asserted jurisdiction to tax. The investment represented by the bank shares is in the states of incorporation. Those states give the essential protection to the bank shares which, in final analysis, is the ultimate basis of property taxation.

It is true that in the *Wheeling Steel Corporation* case this Court, after holding that only one state can tax intangibles, held that, under the circumstances of that case, such state was the state of the "commercial domicile" of the taxpayer. That case involved, however, the taxation of accounts re-

ceivable and bank deposits, not of shares of stock, and particularly not of shares of stock of state banks. The business practices of the *Wheeling Steel Corporation* resulted in all contracts being entered into in West Virginia and substantially all moneys being received and paid out from West Virginia, and this Court held that the accounts receivable arising from such contracts and the bank deposits, under such circumstances, were taxable in West Virginia.

The case of *Senior vs. Braden* (1935), 295 U. S. 422, is an illustration of the fact that the state of domicile is not preferred, for in that case the state of domicile was not permitted to impose a property tax on the resident beneficiary of a trust, the trust property being real estate without Ohio.

The existence of jurisdiction to tax the shares of the state banks here involved will be determined upon practical consideration of wisdom, convenience, and justice, and so as to avoid injustice and oppressive consequences, for:

> "Taxation is an intensely practical matter and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences."
>
> *Farmers Loan & Trust Co. vs. Minnesota (supra),* at page 212 of 280 U. S.

> "Practical considerations of wisdom, convenience and justice alike dictate the desirability of a uniform general rule confining the jurisdiction to impose death transfer taxes as to intangibles to the state of the domicile; and these considerations are greatly fortified by the fact that a large majority of the states have adopted that rule by their reciprocal inheritance tax statutes."
>
> *First National Bank vs. Maine (supra),* at pages 330, 331 of 284 U. S.

The jurisdiction of the state wherein a national bank is located to tax the shares thereof has been upheld by the Supreme Court of the United States in *Tappan vs. Merchants National Bank* (1873), 19 Wallace 490. What is there said in respect of the effect of the statutes establishing the location of a bank as the place where bank shares may be taxed and in respect of the establishment of situs by operation of law is applicable here (pages 499, 500 of 19 Wallace):

> "Shares of stock in National banks are personal property. They are made so in express terms by the act of Congress under which such banks are organized. *They are a species of personal property which is, in one sense, intangible and incorporeal, but the law which creates them may separate them from the person of their owner for the purposes of taxation, and give them a situs of their own.* This has been done. By section forty-one of the National Banking Act, it is in effect provided that all shares in such banks, held by any person or body corporate, may be included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed under State authority, at the place where the bank is located, and not elsewhere. *This is a law of the property. Every owner takes the property subject to this power of taxation under State authority, and every nonresident, by becoming an owner, voluntarily submits himself to the jurisdiction of the State in which the bank is established for all the purposes of taxation on account of his ownership. His money invested in the shares is withdrawn from taxation under the authority of the State in which he resides and submitted to the taxing power of the State where, in contemplation of the law, his investment is*

located. The State, therefore, within which a National bank is situated has jurisdiction, for the purposes of taxation, of all the shareholders of the bank, both resident and non-resident, and of all its shares, and may legislate accordingly." (Italics supplied.)

The appellant contends that the states of incorporation of the banks, the shares of which are here involved, alone have jurisdiction to tax those shares. The uncontroverted facts show that in the exercise of a long established system of taxing bank shares, uniformly followed by the states which tax such shares on an ad valorem basis, the states of incorporation have separated the shares from the person of the owner and the owner has taken and now holds them subject to that action. The shares, being in the state of incorporation, will not be held to be elsewhere.

In view of the rule of immunity from multi-state taxation and the fact that the investment represented by the shares involved is actually in the state of incorporation, practical considerations of wisdom, convenience, and justice require the conclusion that the state of incorporation alone has the power to tax. The following is a summary of the salient characteristics of state banks which we believe establish these contentions:

1. State banks have a peculiarly close relation with the state which creates them, a far closer connection than has the ordinary commercial organization. A state bank may not have an office outside the state of organization. It cannot do business outside the state and it generally cannot qualify to transact business in any other state. The interest of the public and therefore of the state in a state bank is, perhaps, more immediate and direct than in the case of any other corporation. All its activities are very minutely regu-

lated by statute and by the rules, regulations, and orders of the state banking authorities. Its affairs are periodically at frequent intervals examined by the state banking authorities. The business of banking is highly specialized. In a civilized community, the business of banking is perhaps the most indispensable of all. It serves all business and most individuals. The failure or insolvency of a bank has most disastrous effects upon the community it serves, affecting business and individuals far more widely and seriously than the failure of almost any commercial corporation. Above all, the business of a bank is more localized than almost any other business. Its deposits are substantially all from local sources and its loans are for practical purposes all made within its immediate community. No other business institution is more closely localized and no other is of such widespread and fundamental interest to its community.

2. Some three-fourths of the States of the Union tax bank shares on an ad valorem basis and this has been the universal and continued practice for generations. Revenue from this source has always been considered to be an integral part of the financial system of the state of incorporation. If the state of the domicile of a shareholder can tax the shares and the state of incorporation cannot, the result will be a widespread dislocation of the revenue from this source from the locality in which the bank's operations are carried on to the domicile of the shareholders. "Practical considerations of wisdom" dictate the choice of the state of incorporation rather than the state of the domicile or of business situs.

3. Under Section 5219 of the Revised Statutes of the United States, U. S. Code, Title 12, Section 548, as amended, a property tax on national bank shares may be imposed

at a rate not in excess of the rate on other moneyed capital, in the hands of individual citizens of the taxing state, coming into competition with the business of national banks. Shares of state banks are certainly moneyed capital coming into competition with national banks. *First National Bank vs. Anderson* (1926), 269 U. S. 341, 348. If, then, Montana and North Dakota may not constitutionally tax shares of its banks held by non-residents, we submit that it cannot tax the shares of *national* banks located within its borders, as to do so would make the tax upon national bank shares discriminatory and invalid under Section 5219. *Iowa-Des Moines National Bank vs. Bennett* (1931), 284 U. S. 239. If, therefore, this Court holds that Minnesota, and not the state of incorporation, may tax the shares here in question, the result will be to render invalid the laws of all the states which, at the present time, impose an ad valorem tax upon national bank shares.

4. Under the National Banking Act, the property of the national bank itself, except its real estate, cannot be taxed. Revised Statutes, Section 5219, as amended; U. S. Code, Title 12, Sec. 548, as amended. Since the state bank must be able to compete with the national bank, the state is in fact, though not in law, prohibited from taxing state banks except as to real estate. The tax which the ad valorem states impose upon bank shares is, therefore, their only method of obtaining revenue from a state bank. The tax on state bank shares, collected by the bank or a lien upon its assets, is, in fact, although not in law, a tax on the property of the bank and the only such tax which the state of incorporation can collect. If this right is taken away from the state of incorporation as to non-resident stockholders, the state which retains the ad valorem system of taxation is unable to obtain any tax revenue whatsoever from

that portion of the property of the bank represented by the shares owned by non-residents. This would be a gross injustice to the state of incorporation which gives a far greater degree of protection and service to the economic entity made up of the bank and its shareholders than does the state of domicile of a non-resident shareholder.

5. Congress can deny to the states the power to tax national banks or their shares. It properly felt, however, that national banks should bear their just share of taxation. Accordingly, it desired to permit the taxation of national bank shares. In surveying the various methods of direct property taxation of bank shares, Congress deemed most equitable the system of taxation at the location of the bank without regard to the domicile of the holder. In 1864, Congress incorporated in the National Banking Act, 13 Stat. 99, 112, permission to the states to impose an ad valorem tax on national bank shares at the location of the bank and forbade any other state to impose such a tax. This, then, is a declaration by Congress which has endured for seventy years that practical considerations of wisdom and convenience require taxation of bank shares in the state of incorporation and not elsewhere.

6. The Montana and North Dakota statutes cited above follow this universal practice of ad valorem states, impose a property tax upon bank shares at the location of banks, and expressly provide that such shares shall not be taxed elsewhere. Thus, as stated in *First National Bank of Boston vs. Maine, supra,* page 331 of 284 U. S., selection of the state of incorporation is fortified by the statutes not only of Montana and North Dakota, but of all the other ad valorem states, providing for taxation only at the location of the bank, and by the National Banking Act.

7. As above stated, the age-old policy of the Federal Government and of the states has been to place state and national banks upon an equal footing with reference to taxation. In the case of national banks, shares may be taxed only at the location of the bank. If the state of domicile rather than the state of incorporation is selected as the state having jurisdiction to tax the shares of state banks, an element of inequality is introduced. A new element, the domiciles of its shareholders, will come into existence. In some instances the rate of taxation will be lower in the state of incorporation than in the state of domicile, which will induce the stockholders to nationalize such bank; in other instances the converse will be true and stockholders will desire a state rather than a national bank. Thus a fortuitous circumstance will be added to those which now govern the choice between a state and a national bank and the policy of the United States and of the states with reference to equality will be to that extent disrupted.

Shares of state banks are localized to a degree comparable to that of memberships in grain and stock exchanges. Based in part upon the local character of a membership in a Minneapolis stock exchange and in part on the doctrine of *Corry vs. Baltimore* (1905), 196 U. S. 466, this Court sustained property taxation of memberships in the Minneapolis Chamber of Commerce even as to non-resident members. *Rogers vs. Hennepin County* (1916), 240 U. S. 184. In *People ex rel. Whitney vs. Graves, supra*, income taxation by the State of New York of a profit arising from a New York stock exchange membership owned by a resident of Massachusetts was sustained because of the localized character of the membership. In view of the Court's reference in the opinion to double taxation, to the doctrine of *Farmers Loan & Trust Co. vs. Minnesota, supra*, and to the

Wheeling Steel Corporation case, the fair implication of the decision is that only New York could impose a property tax on the membership. We submit that in the case of state bank shares there are present equally cogent reasons for holding them so localized in the state of incorporation as to be taxable there and only there.

The question as to which state has such power is an open one under the decisions of this Court. *Corry vs. Baltimore, supra,* held that the state of incorporation may impose a property tax on non-resident stockholders on account of the stock held by them. *Hawley vs. City of Malden* (1914), 232 U. S. 1, on the other hand, held that the state of domicile of a stockholder may impose a property tax on stock of a foreign corporation, but expressly left open the question whether such state can tax where the state of incorporation by statute fixed the taxable situs of the stock within its borders. Now that only one state can tax, this Court must, we submit, overrule either *Corry vs. Baltimore* or *Hawley vs. City of Malden,* or at least determine the question expressly left undecided in the latter case. Appellant believes that in the case of state bank shares the doctrine of *Corry vs. Baltimore* should be sustained.

II. Appellant's State Bank Shares Have a Business Situs in the Respective States of Incorporation, and the Taxing Jurisdiction Which Is Both the State of Incorporation and of Business Situs Will Be Preferred Over the Jurisdiction in Which the Owner Is Domiciled.

In the preceding sections of this brief, appellant has assumed that its state bank shares have a business situs in Minnesota. It is appellant's position, however, that the facts disclosed by the record do not show a business situs of the bank shares in Minnesota, but on the contrary show that the business situs of those shares is at the location of the various banks. In this connection it is necessary to state additional facts concerning the appellant and its affairs:

Appellant was organized under the laws of Delaware in April, 1929, with the name "First Bank Stock Investment Company." It obtained a license to transact business in Minnesota on April 19, 1929. During the summer of 1929 it acquired for cash a majority of the stock of some seventeen national and state banks located in the Ninth Federal Reserve District. In August, 1929, its corporate name was changed to "First Bank Stock Corporation," and it made an offer of its stock to the stockholders of certain Ninth Federal Reserve District banks in exchange for the stock of such banks, which offer was accepted and the exchange consummated in October, 1929 (R. 18).

Shortly after organization it established an executive office in Minneapolis, Minnesota, which has been continued to the present time. During the fall of 1929 and the years 1930 and 1931, the appellant acquired all or part of the stock of various other banks, trust companies, and financial institutions all located in the Ninth Federal Reserve District (R.

18, 19). Finding that it would be necessary, in order to preserve the value of its interest in the stocks of such banks, to organize a department for their examination and for the giving of advice to such banks with respect to their operations, such department was organized and conducted by the appellant until December 31, 1931 (R. 20). During this period the appellant, by its employees, periodically examined and audited the banks in which it held stock, received reports of their operations, and advised them with reference to accounting practices, the making of loans, the purchase of securities and commercial paper, at times furnished them with advertising material, and, in a number of instances, acted as their agent in the purchase and sale of securities and commercial paper (R. 20). On January 1, 1932, all such activities were taken over by a wholly owned subsidiary of the appellant organized under the laws of Minnesota (R. 21, 22).

Since January 1, 1932, appellant's only activities have been the holding of meetings of stockholders, directors, and of its executive committee, the receipt of interest and dividends, and the giving of proxies to vote the stock owned by it in such banks (R. 22). The appellant does not, and since January 1, 1932, has not, owed any money and it does not buy and sell securities, except in connection with the investment of its own funds. None of the stocks owned by appellant have ever been pledged or hypothecated in any manner. The appellant does not engage, and has not at any time engaged, in the business of trading in securities (R. 23). The appellant owns certain notes receivable, all of which were obtained by it in connection with the acquisition of stocks owned by it or were purchased from banks in which it held stock. It owns and holds certificates of deposit issued by certain member banks and, as

required by the Banking Act of 1933, holds certain United States Government and other bonds. It owns cash deposited in Minnesota banks and certain real estate which it obtained by reason of the liquidation of banks in which it formerly held stock. At the present time it owns the stock of only two non-banking corporations, one of which is the service corporation above mentioned and the other of which is a corporation engaged in the servicing and liquidation of real estate (R. 22, 23). The appellant maintains a complete set of books entirely separate from the books of any other corporation and kept in its Minneapolis office (R. 24). Entries in such books of account are made by employees of its wholly owned subsidiary, the service company. Banks in Minneapolis and St. Paul act as transfer agent and registrar of its stock, and checks in payment of its dividends are prepared by such banks and are mailed to stockholders by the appellant (R. 24). Certificates representing the bank shares here involved are held by appellant for safekeeping at its Minneapolis office where its seal has at all times been kept (R. 21, 15, 2).

Appellant, for the year 1934, returned for taxation in Minnesota all its taxable money and credits other than the stocks in state banks of other states (R. 15, 16).

The Minnesota Supreme Court by no means held that the corporate existence of appellant's subsidiaries, and of the banks in which it held stock, is in any manner disregarded by the appellant, but did state that it regarded as unimportant the fact that the supervisory services formerly performed by appellant were now performed by a wholly owned subsidiary, stating (269 N. W. 37) (R. 118):

> "Nor do we mean to suggest that the respondent, through the plenary character of its control of its subsidiary banks and the use which it makes thereof, is

> going 'beyond that which is proper on the part of a majority stockholder.' We do regard as unimportant the fact that much of the supervision formerly exercised by respondent directly has been taken over by its wholly owned subsidiary, the 'First Service Corporation.'"

It seems obvious to appellant that an intangible cannot have two business situs. To appellant it is equally apparent that the true business situs of its state bank shares, if one exists, is in the state of incorporation and not in Minnesota. The localized character of state bank shares and the many close practical and legal ties which they have to the state of incorporation have been fully discussed above in our argument that the state of incorporation is the only one which may impose a property tax. No other business corporation is so completely localized. Such shares seem more nearly analogous to memberships in grain and stock exchanges than to shares in an ordinary commercial corporation.

It will be noted that appellant is not engaged in the business of dealing or trading in securities. Its state bank shares have never been sold or pledged or in any manner hypothecated. This case, therefore, is not within the rule of such decisions as *State vs. Harrington* (1923), 68 Montana 1, 217 Pac. 681; *Hill vs. Carter* (C. C. A. 9th, 1931), 47 Fed. (2d) 869 (Cert. denied 284 U. S. 625); *DeGanay vs. Lederer* (1919), 250 U. S. 376, where the use of securities in an active investment business was held to give the securities a business situs at the place of such use. Further, the physical presence of the stock certificates in Minnesota does not, of course, fix their business situs there. *Buck vs. Beach* (1907), 206 U. S. 392, 408; *State vs. Great Northern Railway Company* (1918), 139 Minn. 469, 472, 167 N. W. 297.

Previously in this brief we have argued that the state of incorporation of state banks is the one having jurisdiction to tax the shares thereof, and not the state of business situs or of domicile of the owner. In this case, however, and, for that matter, in the case of all state bank shares, the state of incorporation is, we believe, also the state in which is located the business situs of the bank shares. The choice lies, therefore, between the state of incorporation *and* of business situs, on the one hand, and the state of domicile of the owner, on the other hand. That the state of business situs is to be preferred over the state of domicile is shown by the recognition given by this Court to business situs in the inheritance tax cases and, in the *Wheeling Steel Corporation* case, *supra*, by the exception from West Virginia property taxation of intangible property having a business situs in Ohio. (See p. 214 of 298 U. S.)

The question whether appellant had a commercial domicile in Minnesota is, therefore, immaterial, and appellant merely points out that no case involving property taxation has been found by appellant deciding that a holding company, such as appellant, has a domicile of any character outside the state of its incorporation. Appellant's situation is distinguishable from that of the Wheeling Steel Corporation which was actively engaged in business in West Virginia.

Taxation on Theory of "Increment through Amalgamation."

The Supreme Court of Minnesota in its first opinion (267 N. W. 519 at page 523 (R. 112), stated that the stocks held by appellant in the various banks, by reason of the amalgamation of the ownership thereof, had a value in excess of the value of the constituent banks. The Court further stated that such increment of value had a situs in Minnesota and was there subject to taxation, and then stated that if the tax sought to be imposed in the case at bar were not sustained, such increment of value would wholly escape taxation.

The appellant respectfully points out that there is nothing whatsoever in the record to show that the value of all the appellant's stock holdings is greater than the aggregate value of the unit banks considered separately.

Even if such an increment in value did exist, that is not the value which is being taxed in the case at bar. The tax here is a second and duplicate tax upon the shares of certain foreign state banks owned by appellant, and this value has no relation whatsoever to the value of the increment arising from the ownership of stocks of a number of banks. To attempt to measure the increment in value of a number of national and state bank stocks by taking the entire value of the stocks of certain foreign state banks would be arbitrary, capricious, and invalid. Moreover, many of the banks in which appellant holds stocks are national banks, located in other states, and attempted taxation of an increment in value of such stocks by the State of Minnesota would be invalid under the National Banking Act.

The increment in value of which the Minnesota court speaks is the very property which Section 2021, *Mason's Minnesota Statutes of 1927,* was designed to reach, which

statute the Minnesota Supreme Court recently declared to have been repealed by implication. *Bemis Bro. Bag Co. vs. Wallace* (1936), 197 Minn....., 266 N. W. 690; *S. H. Clausin & Co. vs. Wallace* (1936), 197 Minn....., 266 N. W. 690. It will further be noted that the increment in value, if any did exist, would be reflected in the market value of appellant's stock, which stock is itself a separate object of taxation.

Accordingly, appellant respectfully submits that the record contains no scintilla of evidence that such an increment in value in fact existed at the time of the assessment of the tax in question, and that even if such increment existed, such fact in no way supports or justifies the imposition of a second and double tax upon appellant's shares of stock in foreign state banks.

CONCLUSION.

The appellant submits that it is the settled doctrine of this Court that only one state can constitutionally impose a property tax on intangibles. In the case of state bank shares, because of their unique characteristics, the state having jurisdiction to tax is the state of incorporation of the bank, and not the state of domicile of the owner or of business situs. Moreover, because of the complete localization of state bank shares, their business situs, if one does exist, is in the state of incorporation. Between the jurisdiction which is both the state of incorporation of the bank and the state in which is the business situs of the shares and the jurisdiction in which the owner is domiciled, it is apparent that the former is to be preferred.

For the foregoing reasons, appellant respectfully prays

that the judgment entered by the Supreme Court of Minnesota in this case be reversed.

Dated February 23, 1937.

Respectfully submitted,

JOHN JUNELL,
CLARK R. FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant,
1300 First Nat'l-Soo Line Building,
Minneapolis, Minnesota.

Of Counsel:

JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, FLETCHER, DORSEY, BARKER & COLMAN.

APPENDIX.

Mason's Minnesota Statutes of 1927, Section 2337:

As used in this section of the word "money" means gold and silver coin, treasury notes, bank notes and other forms of currency in common use; and the word "credits" means and includes every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due, and all shares of stock in corporations the property of which is not assessed or taxed in this state.

As hereinbefore defined, money and credits are hereby exempt from taxation other than that imposed by this act and shall hereafter be subject to an annual tax of three (3) mills on each dollar of the fair cash value thereof. But nothing in this act shall apply to money or credits belonging to incorporated banks located within this state, nor to any indebtedness on which taxes have been properly and fully paid under the provisions of Sections 2301-2309 (2322-2330), General Statutes of Minnesota 1913, nor to moneyed capital in the hands of individual citizens of this state coming into competition with the business of national banks; provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

Revised Codes of Montana of 1921, as amended, Section 2067:

Every State bank or banking corporation located and doing business in this State, and every private banker doing business in this State, shall be taxable upon the value of all

real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by Section 1999 of the Revised Codes of Montana of 1921, and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessments, adopt the figures disclosed by any prior report made by such bank, banking corporation or private banker to any State or Federal officer pursuant to any State or Federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is as-

sessable and taxable to such bank or banking corporation in this State, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place. The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

Compiled Laws of North Dakota (1913), as amended, Sections 2115 (1) to 2117:

Sec. 2115 (1) Bank and trust company stock; where and at what valuation to be listed. The shares of stock of every bank and of every loan and trust company located in this state whether organized under the laws of this state or the United States or of any other state or country shall be assessed to the individual stockholders or owners thereof at the place where the bank or loan and trust company is located and not elsewhere. Such shares shall be listed and assessed to the owner thereof with reference to their value on the first day of April of each year and shall be taxed at the same rate as other property in the same taxing district is taxed.

(2) Determination of the value of shares of capital stock. On or before the first day of May in each year, the officers of each bank or loan and trust company located in this state shall file a statement with the state tax commissioner and with the county auditor of the county where located, verified by oath, showing the amount and number of shares of capital stock of such bank, loan and trust company, the names and residences of the several stockholders and the amount owned by each; the amount of the corporation's surplus or reserve fund and undivided profits as of April 1st preceding. The value of each share of stock in each bank, loan and trust company, except such as are in liquidation, shall be taken to be the par value thereof, together with its pro rata share of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation, shall be taken to be its pro rata share of the actual value of the assets of such bank, or loan and trust company.

(3) Deduction of real estate and personal property to ar-

rive at taxable value of shares of stock. Real estate owned by any bank or loan and trust company shall be assessed and taxed as other real estate is under this article. Personal property of any bank, loan and trust company, except furniture, fixtures and equipment, shall be returned in the name of the bank or trust company, and shall be assessed and taxed as other personal property is under this article. In determining the taxable value of the shares of stock of such corporation, the tax commissioner shall deduct the net amount of such corporation's investment in real estate and the net amount of its investment in taxed personal property from the aggregate amount of the capital stock, surplus and undivided profits, and the remainder shall be taken as the basis for valuation of such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value, or such other provision of law as may be enacted at this or subsequent sessions of the legislature classifying such property for assessment purposes.

To determine the amount which shall be considered as being invested in real estate, the tax commissioner shall deduct from the total of such investment the amount of investments in real estate where the bank or loan and trust company has sold the real estate under contract whereby the purchaser agrees to pay the taxes assessed against such property.

(4) Computation of value. The tax commissioner shall compute the total net taxable value of the capital stock of each bank or loan and trust company and shall assess such shares of capital stock and shall on or before the first business day in July of each year certify such assessment to the county auditor of the county where such bank or loan and trust company is located.

(5) Computation of net taxable value. The county auditor shall compute the net taxable value of each share of stock in any bank or loan and trust company and shall multiply such value by the number of shares held by each individual stockholder and enter such assessment against the individual stockholder; provided that any solvent bank or loan and trust company may, upon written request of its cashier or other officer, have the amount of the assessment herein provided for against its stockholders assessed against the bank or loan and trust company in its corporate name and the taxes thereon may be paid as other expenses of the bank or loan and trust company are paid. The shares of capital stock in banks or loan and trust companies, not located in this state, but owned in this state, shall not be required to be listed under this article.

(6) Assessing all moneyed capital. All moneyed capital within the meaning of section fifty-two hundred nineteen (5219) of the Revised Statutes of the United States shall be listed and assessed against the owner thereof at his place of business, and if a corporation at its principal place of business, at the same rate as state, national bank, loan and trust company stock is taxed in the same taxing district, and at the actual value of the moneyed capital so invested or at such percentage of actual value as may be provided by law for assessment of bank, loan or trust company stock with similar deductions for investments in real estate and taxed personal property as are allowed by this act in arriving at the net taxable value of bank stock. The person or corporation using moneyed capital in competition with bank capital shall furnish the assessor upon demand a full and complete itemized, sworn statement showing the amount of moneyed capital so used.

(7) Refusal to furnish a list of stockholders; penalty. A refusal to furnish the tax commissioner or the county auditor with the list of stockholders and the information required under this act shall be deemed a misdemeanor and any bank or loan and trust company or any officer thereof so refusing shall be punished by a fine not exceeding five hundred dollars.

Sec. 2116. Bank to keep and furnish list of stockholders. In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office.

Sec. 2117. Taxes on bank stock to be a lien on dividends. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest, respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the

said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale.

Supreme Court of the United States

OCTOBER TERM, 1936

No. 614

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA,
Appellee.

No. 618

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA,
Appellee.

BRIEF OF APPELLANT OPPOSING THE MOTIONS OF APPELLEE TO DISMISS THE APPEALS IN THE TWO FOREGOING ACTIONS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENTS FROM WHICH SUCH APPEALS WERE TAKEN.

JOHN JUNELL,
CLARK FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant in both cases,
1300 First National-Soo Line Building,
Minneapolis, Minnesota.

OF COUNSEL:
JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

INDEX.

	Page
Statement of the Case	2
Position of Appellant	3
Statement of Facts	3
Argument	4

CASES CITED.

Baldwin vs. Missouri, 281 U. S. 586	5
Beidler vs. South Carolina Tax Commission, 282 U. S. 1	5
Corry vs. Baltimore, 196 U. S. 466	10
Farmers Loan & Trust Co. vs. Minnesota, 280 U. S. 204	5
First National Bank vs. Anderson, 269 U. S. 341	7
First National Bank of Boston vs. Maine, 284 U. S. 312	6, 9
Hawley vs. City of Malden, 232 U. S. 1	10
Iowa-Des Moines National Bank vs. Bennett, 284 U. S. 239	7
People ex rel. Whitney vs. Graves, ... U. S.	10
Rogers vs. Hennepin County, 240 U. S. 184	10
Wheeling Steel Corporation vs. Fox, 298 U. S. 193	5, 6

STATUTES CITED.

Federal:

Constitution of the United States, 14th Amendment 4, 5

United States Code, Title 12, Section 548, as amended (Revised Statutes, Section 5219) 7, 8

State:

Mason's Minnesota Statutes of 1927, Sections 2337-2349 3

Revised Codes of Montana of 1921, Section 2067, as amended .. 3

Compiled Laws of North Dakota (1913), as amended, Sections 2115(1) to 2117 3

Supreme Court of the United States

OCTOBER TERM 1936

No....647..

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

No...648..

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLANT OPPOSING THE MOTIONS OF APPELLEE TO DISMISS THE APPEALS IN THE TWO FOREGOING ACTIONS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENTS FROM WHICH SUCH APPEALS WERE TAKEN.

Two appeals were taken by appellant to this Court. The first, No. 647, is from an order or judgment of the Supreme Court of the State of Minnesota reversing an order entered by the District Court of Hennepin County, Minnesota, denying the alternative motion of the appellee for amended findings or for a new trial. The second, No. 648, is from a judgment entered in the Supreme Court of the State of Minnesota upon a second appeal in the same action in favor of the appellee and against the appellant.

The Supreme Court of the State of Minnesota rendered three opinions in the case in which the two above appeals have been taken. One of these, following oral argument, was handed down June 19, 1936, and is reported in ... Minn. ..., 267 N. W. 526. The second opinion was rendered October 9, 1936, in denying appellant's petition for reargument, and is reported in ... Minn. ..., 269 N. W. 37. The third was rendered December 11, 1936, upon the second appeal to the Supreme Court of the State of Minnesota, and is reported in ... Minn. ..., 270 N. W. ....

STATEMENT OF THE CASE

The issues presented by these appeals are:- (1) Can more than one state constitutionally impose a property tax on state bank shares, and (2) if only one state can so tax, is it the state of incorporation of the state bank, on the one hand, or the state of domicile of the shareholder or the state within which the shares may have a business situs, on the other hand, which can impose the tax?

POSITION OF APPELLANT

The appellant contends that only one state can constitutionally impose a property tax on intangibles and that, in the case of state bank shares, it is the state of incorporation of the bank which can impose such tax, and not the state of domicile of the shareholder or of the business situs of the shares. Appellant further contends that it is not domiciled in the State of Minnesota and that the shares of stock it holds in state banks located without Minnesota have not acquired a business situs within the State of Minnesota.

STATEMENT OF FACTS

From the three opinions of the Minnesota Supreme Court the following salient facts appear: First Bank Stock Corporation, the appellant, is a Delaware corporation licensed to transact business in Minnesota. It owns a majority of the shares of various national and state banks all located in the Ninth Federal Reserve District. Among the stocks owned by it are those of certain state banks incorporated by, and doing business solely within, the States of North Dakota and Montana. Such states for the year 1934 imposed a property tax upon all of the shares of stock of such banks. *The statutes of both states expressly provide that shares of stock of banks incorporated therein are subject to tax at the location of the bank, and not elsewhere.* Compiled Laws of North Dakota (1913), as amended, Sections 2115 (1) to 2117. Revised Codes of Montana of 1921, Section 2067, as amended.

The State of Minnesota assessed a property tax for the year 1934 upon the appellant on account of such bank shares, pursuant to Sections 2337 to 2349, *Mason's Minnesota Statutes of 1927.*

ARGUMENT

The Supreme Court of the State of Minnesota held that the Minnesota statute, construed to impose a tax upon such bank shares, did not deprive appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, saying (... Minn. ..., 267 N. W., p. 522):

> "• • • deciding the question strictly as one of Federal constitutional law, we hold that the taxation in Minnesota, as attempted under our Money and Credits Tax Law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process. • • •"

The Supreme Court of Minnesota recognized that the issues presented in that Court involved an important principle of Federal constitutional law, and that the question was by no means a settled one, saying, in its second opinion (... Minn. ..., 269 N. W. 37):

> "It may not be necessary to add more to make plain our realization that the judgment of this court does not settle the matter. Deliberately we have tried to throw the question into bold relief. It may be necessary, as counsel suggest, to 'overrule' either *Corry vs. Baltimore*, 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556, or *Hawley vs. City of Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, Ann. Cas. 1916C, 842. But the choice between them, if one must be made, is for the tribunal whose judgments are supreme in the field of federal constitutional law. There also must be answered 'the question expressly left undecided' in *Hawley vs. City of Malden, supra*, whether the chartering state may monopolize the right

to tax the shares of its corporations wherever owned, by declaring that its domain shall be the exclusive situs for such taxation."

Prior to the decision of the Supreme Court of Minnesota, the trial court had held the Minnesota statute, with respect to the shares of state banks in question, unconstitutional as a taking of appellant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The appellant respectfully submits that the three opinions of the Supreme Court of the State of Minnesota show, beyond a doubt, that these appeals involve a substantial question of Federal constitutional law. However, the appellant wishes briefly to summarize its contentions in order to demonstrate that the questions on which the decision of the cause depends are by no means unsubstantial.

The appellant contends that it is now the doctrine of this Court that only one state can constitutionally impose a property tax upon an intangible, and that in the case of shares of state banks such taxation can constitutionally be imposed only by the state of incorporation, and not by the state of domicile of the owner or of the business situs of the shares.

The appellant submits that the decision of this Court in *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 809, establishes that intangibles enjoy an immunity against property taxation at more than one place. The opinion of this Court rests such doctrine on the recent inheritance tax cases. *Farmers Loan and T. Co. vs. Minnesota* (1930), 280 U. S. 294, 211; 50 S. Ct. 98, 74 L. Ed. 371, 374, 65 A. L. R. 1000; *Baldwin vs. Missouri* (1930), 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A. L. R. 1303; *Beidler vs. South Carolina Tax Commission* (1930),

282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131; *First National Bank of Boston vs. Maine* (1932), 284 U. S. 312, 328, 329, 52 S. Ct. 174, 76 L. Ed. 313, 319, 320, 77 A. L. R. 1401.

The question remains, where the owner of the stock is domiciled in the state other than that of incorporation of the bank, or when the stock has a business situs in some other state, as to whether the state of domicile, the state of business situs or the state of incorporation is the one which constitutionally may impose the tax. It is true that, in the inheritance tax cases above cited, and in the Wheeling Steel Corporation case, *supra*, it has been held that the state which can impose the tax is the state of domicile or that of the business situs. We believe, however, for the reasons hereinafter set forth, that in the case of state bank shares, it is the state of incorporation, and not that of the domicile of the stockholder or of the business situs of the stock which can impose a property tax.

Jurisdiction to impose an *inheritance* tax depends on the state having jurisdiction of the transfer of the property at death, and such state is, of course, in the case of intangibles, the state of the domicile of the decedent. Jurisdiction to impose a *property* tax, on the other hand, depends upon the true situs of the property, *i. e.*, where it is habitually employed, and such jurisdiction must be consistent with the like jurisdiction of other states.

In the case at bar, the jurisdiction of Minnesota must be determined on a basis which is consistent with the jurisdiction of the states of incorporation of the banks. Here the states of incorporation have asserted jurisdiction to tax. The investment represented by the bank shares is in the states of incorporation. Those states give the essential protection to the bank shares which, in final analysis, is the ultimate basis of property taxation.

Practical considerations of wisdom, convenience, and justice require the conclusion that the state of incorporation alone has the power to tax. The following is a summary of the salient characteristics of state banks which we believe establish these contentions.

1. Some three-fourths of the states of the Union tax bank shares on an ad valorem basis, and this has been the universal and continued practice for generations. Revenue from this source has always been considered to be an integral part of the financial system of the state of incorporation. If the state of the domicile of a shareholder can tax the shares, and the state of incorporation cannot, the result will be a widespread dislocation of the revenue from this source from the locality in which the bank's operations are carried on to the domiciles of the shareholders.

2. Under Section 5219 of the Revised Statutes of the United States, U. S. Code, Title 12, Section 548, as amended, national bank shares may be taxed at a rate not in excess of the rate on other moneyed capital in the hands of individual citizens of the taxing state coming into competition with the business of national banks. Shares of state banks are certainly moneyed capital in competition with national banks. *First National Bank vs. Anderson* (1926), 269 U. S. 341, 348, 46 S. Ct. 135, 70 L. Ed. 295. If, then, Montana and North Dakota may not constitutionally tax shares of its banks held by non-residents, we submit that it cannot tax the shares of national banks located within its borders, as to do so would make the tax upon national bank shares discriminatory and invalid under Section 5219. *Iowa-Des Moines National Bank vs. Bennett* (1931), 284 U. S. 239, 52 S. Ct. 133, 76 L. Ed. 265. If, therefore, this Court holds that Minnesota, and not the state of incorporation, may tax the

shares here in question, the result will be to render invalid the laws of all the states (including Minnesota) which, at the present time, impose an ad valorem tax upon national bank shares.

3. Under the National Banking Act, the property of the bank itself cannot be taxed except its real estate. Revised Statutes, Section 5219; U. S. Code, Title 12, Sect. 548, as amended. Since the state bank must be able to compete with the national bank, the state is in fact, though not in law, prohibited from taxing state banks except as to real estate. The tax which the states impose upon bank shares is, therefore, their only method of obtaining revenue from a state bank. The tax on state bank shares, collected by the bank or a lien upon its assets, is, in fact, although not in law, a tax on the property of the bank and the only such tax which the state of incorporation can collect. If this right is taken away from the state of incorporation as to non-resident stockholders, the state which retains the ad valorem system of taxation is unable to obtain any tax revenue whatsoever from that portion of the property of the bank represented by the shares owned by non-residents. This would be a gross injustice to the state of incorporation which gives a far greater degree of protection and service to the economic entity made up of the bank and its shareholders than does the state of domicile of a non-resident shareholder.

4. Congress can deny to the states the power to tax national banks or their shares. It properly felt, however, that national banks should bear their just share of taxation. Accordingly, it desired to permit the taxation of national bank shares. In surveying the various methods of direct property taxation of bank shares, Congress deemed most equitable the system of taxation at the location of the bank

without regard to the domicile of the holder. In 1864, Congress incorporated in the National Banking Act, 13 Stat. 99, 112, permission to the states to impose an ad valorem tax on national bank shares at the location of the bank and forbade any other state to impose such a tax. This, then, is a declaration by Congress which has endured for seventy years that practical considerations of wisdom and convenience require taxation of bank shares in the state of incorporation and not elsewhere.

5. The Montana and North Dakota statutes cited above follow this universal practice of ad valorem states, impose a property tax upon bank shares at the location of the banks, and expressly provide that such shares shall not be taxed elsewhere. Thus, as stated in *First National Bank of Boston vs. Maine, supra,* page 331 of 284 U. S., selection of the state of incorporation is fortified by the statutes not only of Montana and North Dakota, but of all the other ad valorem states providing for taxation only at the location of the bank, and by the National Banking Act.

6. As above stated, the age old policy of the Federal Government and of the states has been to place state and national banks upon an equal footing with reference to taxation. In the case of national banks, shares may be taxed only at the location of the bank. If the state of domicile rather than the state of incorporation is selected as the state having jurisdiction to tax the shares of state banks, an element of inequality is introduced. A new element, the domiciles of its shareholders, will come into existence. In some instances the rate of taxation will be lower in the state of incorporation than in the states of domicile, which will induce the stockholders to nationalize such bank; in other instances the converse will be true and stockholders will

desire a state rather than a national bank. Thus a fortuitous circumstance will be added to those which now govern the choice between a state and a national bank and the policy of the United States and of the states with reference to equality will be thus far disrupted.

The localized character of a membership in the Minneapolis Chamber of Commerce was such that property taxation thereof was sustained in *Rogers vs. Hennepin County* (1916), 240 U. S. 184, 36 S. Ct. 265, 60 L. Ed. 594, even as to non-resident members. In *People ex rel. Whitney vs. Graves*, ... U. S. ... (decided by this Court on January 4, 1937, and not yet officially reported), income taxation by the State of New York of a profit arising from a New York Stock Exchange Membership owned by a resident of Massachusetts was sustained, because of the localized character of the membership. We submit that in the case of state bank shares there are present equally cogent reasons for holding them so localized in the state of incorporation as to be taxable there, and only there.

The case of *Corry vs. Baltimore* (1905), 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556, holds that the state of incorporation may tax non-resident stockholders with respect to the stock held by them. On the other hand, *Hawley vs. City of Malden* (1914), 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, holds that the state of domicile of a stockholder of a foreign corporation may tax the stockholder's stock, but expressly leaves open the question of whether such state can tax where the state of incorporation by statute fixed the taxable situs of the stock within its borders. Since it is now firmly established that only one state can impose a property tax, this Court must overrule either *Corry vs. Baltimore* or *Hawley vs. City of Malden*, or at least determine the question expressly left undecided in the latter case.

As a second and separate reason for asking for a reversal of the decision of the Minnesota Supreme Court herein, the appellant contends that the shares of stock involved do not have a business situs in Minnesota and, hence, that taxation thereof by Minnesota is unconstitutional under the Fourteenth Amendment. However, the decision of this question requires a detailed examination of the facts. The record is not yet before this Court and the argument of appellant on this point is necessarily extensive. For these reasons, appellant here omits further mention of its argument on this branch of the question.

For the foregoing reasons, appellant respectfully submits that the questions presented by these appeals are not unsubstantial and that this Court should deny appellee's motions to dismiss the appeals, or, in the alternative, to affirm the decisions of the Supreme Court of the State of Minnesota.

Dated January 13, 1937.

Respectfully submitted,

JOHN JUNELL,
CLARK A. FLETCHER,
LELAND W. SCOTT,
Attorneys for Appellant in Both Cases,
1300 First National-Soo Line Building,
Minneapolis, Minnesota.

Of Counsel:
JOSEPH H. COLMAN,
A. McC. WASHBURN,
JUNELL, DRISCOLL, FLETCHER, DORSEY & BARKER.

FILE COPY

FILED
JAN 12 1937
CHARLES ELMORE CRO
CLE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 647

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

WILLIAM S. ERVIN,
MATTHIAS N. ORFIELD,
FRANK J. WILLIAMS,
Counsel for Appellee.

INDEX.

Subject Index.

	Page
Statement opposing jurisdiction	1
Motion to dismiss or affirm	5

Table of Cases Cited.

Bristol v. *Washington County*, 177 U. S. 133, 44 L Ed. 701, 20 Sup. Ct. Rep. 585	2, 6
DeGanay v. *Lederer*, 250 U. S. 376, 63 L. Ed. 1042, 39 Sup. Ct. Rep. 524	3, 6
Hamilton v. *Brown*, 161 U. S. 256, 40 L. Ed. 601, 16 Sup. Ct. Rep. 585	3, 6
Hawley v. *Malden*, 232 U. S. 1, 58 L. Ed. 477, 34 Sup. Ct. Rep. 201	2, 6
Metropolitan Life Insurance Co. v. *New Orleans*, 205 U. S. 395, 51 L. Ed. 853, 27 Sup. Ct. Rep. 499	3, 6
New Orleans v. *Stempel*, 175 U. S. 309, 44 L. Ed. 174, 20 Sup. Ct. Rep. 110	2, 6
Wheeling Steel Corporation v. *Fox et al.*, 298 U. S. 193, 80 L. Ed. 809, 56 Sup. Ct. Rep. 773	3, 6

IN SUPREME COURT, STATE OF MINNESOTA

1936.

No. 31234

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

STATE OF MINNESOTA,

Respondent,

vs.

FIRST BANK STOCK CORPORATION,

Appellant.

STATEMENT MAKING AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Now comes the State of Minnesota, by its counsel of record, and shows:

1. That the question involved in this appeal is whether the State of Minnesota has jurisdiction to tax intangibles owned by appellant which have been given a business situs in that State.

2. The Supreme Court of the State of Minnesota found as facts:

(a) The property taxed consists of shares of stock in Montana and North Dakota State banks.

(b) Appellant First Bank Stock Corporation is a Delaware corporation authorized to transact business and having its principal office in Minnesota.

(c) The stock owned by appellant in the Montana and North Dakota State banks are not held merely for investment. They are not dealt in or traded but were acquired and are owned for the purpose of giving appellant plenary control over the banks. The banks are managed, supervised and periodically examined by Appellant. It selects all their officers and dictates all their policies. Appellant's business is a very important economic unit which, as to headquarters and management, is localized in Minnesota, wherein, also, are many banks, both State and national, which it controls through stock ownership. Its corporate seal is kept at its Minneapolis office. All meetings of its stockholders, board of directors and executive committee are held in Minneapolis or or St. Paul, Minnesota. The certificates for its stocks in subsidiary banks are all kept at the Minneapolis office. Appellant regularly returns for taxation in Minnesota all its taxable money and credits, other than the stock in State banks of other States.

3. The State of Minnesota respectfully contends that appellant's claim of jurisdiction lacks substantiality and that the question presented by the record in this case has been explicitly foreclosed by the following decisions of the Supreme Court of the United States, so as to leave no room for a real controversy:

Hawley v. *Malden,* 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477;

Bristol v. *Washington County,* 177 U. S. 133, 20 S. Ct. 585, 44 L. Ed. 701;

New Orleans v. *Stempel,* 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174;

Metropolitan Life Insurance Co. v. *New Orleans*, 205 U. S. 395, 27 S. Ct. 499, 51 L. Ed. 853;
DeGanay v. *Lederer*, 250 U. S. 376, 39 S. Ct. 524, 63 L. Ed. 1042;
Hamilton v. *Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 601;
Wheeling Steel Corporation v. *Fox et al.*, 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 809.

Respectfully submitted:

WILLIAM S. ERVIN,
MATTHIAS N. ORFIELD,
FRANK J. WILLIAMS,
Counsel for the State of Minnesota.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 647

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934

STATE OF MINNESOTA,

Appellee,

vs.

FIRST BANK STOCK CORPORATION,

Appellant.

MOTION OF APPELLEE TO DISMISS THE APPEAL AND TO AFFIRM THE DECISION OF THE SUPREME COURT OF THE STATE OF MINNESOTA.

Comes now the State of Minnesota, the appellee herein, by its counsel, and moves this Court to dismiss, with costs, the appeal taken herein to this Court by First Bank Stock Corporation upon the following ground: That said appeal presents no substantial Federal question for consideration by this Court.

In the alternative appellee moves this Court to affirm the judgment from which said appeal purports to have been taken because, although the record in said cause may show

that this Court has jurisdiction in the premises, yet it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

In support of said motion to dismiss and in the alternative to affirm appellee respectfully submits the following cases:

Hawley v. *Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477;

Bristol v. *Washington County*, 177 U. S. 133, 20 S. Ct. 585, 44 L. Ed. 701;

New Orleans v. *Stempel*, 175 U. S. 301, 20 S. Ct. 110, 44 L. Ed. 174;

Metropolitan Life Insurance Co. v. *New Orleans*, 205 U. S. 395, 27 S. Ct. 499, 51 L. Ed. 853;

DeGanay v. *Lederer*, 250 U. S. 376, 39 S. Ct. 524, 63 L. Ed. 1042;

Hamilton v. *Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 601;

Wheeling Steel Corporation v. *Fox et al.*, 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 809.

Respectfully submitted:

WILLIAM S. ERVIN,
MATTHIAS N. ORFIELD,
FRANK J. WILLIAMS,
Counsel for the Appellee.

OPY

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 647.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLEE.

WILLIAM S. ERVIN,
Attorney General of Minnesota,
MATHIAS N. ORFIELD,
Deputy Attorney General,
State Capitol, St. Paul, Minnesota,
Attorneys for Appellee.

FRANK J. WILLIAMS,
Minneapolis, Minnesota,
Of Counsel.

Hayward Brief Co. 601-7 Fourth Ave. So., Minneapolis

INDEX.

	Page
Decision to be reviewed	1
The facts	2
Summary of argument	5
Point I. The right of a state to tax property within its territorial jurisdiction is inherent and an attribute of sovereignty	7
Point II. This court, in the process of developing a symmetrical system of preventing multi-state taxation of the same economic interest, has laid down certain rules by which the right of a given state to tax intangibles is to be determined	8
Point III. The facts in this case bring the property here in question, under the rules as formulated, within the jurisdiction of the State of Minnesota	11
Point IV. Minnesota has a constitutional right to tax the property in question	18
Point V. Appellant's position is untenable in the light of recent decisions of this court	22
Point VI. The right to tax stock in state banks rests on fundamentally different considerations from the right to tax national bank stock	25
Increment through amalgamation	30
Appendix	31
Taxation of national banks	31

INDEX OF CASES CITED.

	Page
Adams vs. Nashville, 95 U. S. 19, 20, 24 L. Ed. 369	25
Baldwin vs. Missouri, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056	8
Bank of California, National Association, vs. Richardson, 248 U. S. 476, 39 S. Ct. 165, 63 L. Ed. 372	25
Beidler vs. South Carolina Tax Commission, 282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131	8
Brotherhood Co-op. National Bank vs. Hurlburt, 21 Fed. (2nd) 85	27
Central National Bank of Topeka vs. MacFarland, 20 Fed. (2d) 416; affirmed (C. C. A. 1928) 26 Fed. (2d) 890; certiorari denied 278 U. S. 606, 49 S. Ct. 12, 73 L. Ed. 533	27
Citizens National Bank vs. Durr, 257 U. S. 99, 42 S. Ct. 15, 66 L. Ed. 149	15
Cleveland, Paynesville & Ashtabula R. R. Co. vs. Pennsylvania, 82 U. S. (15 Wall.) 300, 21 L. Ed. 170	25
Commercial National Bank vs. Custer County, 275 U. S. 502, 48 S. Ct. 155, 72 L. Ed. 395	27
Corry vs. Baltimore, 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556	15, 21
De Ganay vs. Lederer, 250 U. S. 376, 39 S. Ct. 524, 63 L. Ed. 1042	15
Farmers Loan & Trust Co., The vs. Minnesota, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371	8, 9, 15, 22
First National Bank of Boston vs. Maine, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313	8, 22
First National Bank of Guthrie Center vs. Anderson, 46 S. Ct. 135, 269 U. S. 341, 70 L. Ed. 295	25, 26, 27
First National Bank vs. Hartford, 273 U. S. 548, 47 S. Ct. 462, 71 L. Ed. 767	27
First National Bank vs. Richmond, 39 Fed. 309; appeal dismissed, 13 S. Ct. 1044, 149 U. S. 769, 37 L. Ed. 959	25
Hawley vs. City of Malden, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477	10, 19
Mercantile National Bank vs. City of New York, 28 Fed. 776; affirmed 7 S. Ct. 826, 121 U. S. 138, 30 L. Ed. 895	25
Merchants National Bank vs. Richmond (June 6, 1921), 256 U. S. 635, 41 S. Ct. 619, 65 L. Ed. 1135	26
People of State of New York ex rel. Whitney vs. Graves, et al., 57 S. Ct. 237 (decided Jan. 4, 1937)	9, 13, 15, 22
Pullman Palace Car Co. vs. Pennsylvania, 148 U. S. 18, 11 S. Ct. 876, 35 L. Ed. 613	7
Roberts vs. American National Bank of Pensacola, 97 Fla. 411, 121 So. 554	27
Safe Deposit & Trust Co. vs. Virginia, 280 U. S. 83, 50 S. Ct. 59, 74 L. Ed. 180	8
Senior vs. Braden, 295 U. S. 422, 55 S. Ct. 800, 79 L. Ed. 1520	10
State vs. First National Bank, 204 N. W. 874, 205 N. W. 375, 164 Minn. 235	25

State vs. First National Bank, 273 U. S. 561, 47 S. Ct. 468, 71 L. Ed. 774 27
Virginia vs. Imperial Coal Sales Co., 293 U. S. 15, 55 S. Ct. 14, 79 L. Ed. 171 10
Wheeling Steel Corporation vs. Fox, 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 1143 ..... 8, 22

TEXT BOOKS CITED:

Cooley on Constitutional Law (7th ed.) 678 7

STATUTES CITED.

Mason's Minnesota Statutes 1927, Sections 2026-1 to 2026-4 27
Mason's Minnesota Statutes 1927, Section 2322 27
Mason's Minnesota Statutes 1927, Section 2337 27
General Acts of Alabama, 1935, Act No. 194 (Article XII, p. 428) 28
General Laws of California, 1931 Deering Act 8488 (amendments 1933 Deering Sup. 1935 Deering Sup.) 28
Idaho Session Laws 1933, Chapter 159 28
Massachusetts Annotated Laws (Vol. 2), Chapter 63; 1936 Cum. Sup. 28
McKinney's Consolidated Laws of New York, Book 59, Art. 9-C 28
Oklahoma Session Laws 1935, Chapter 66, Article 6 28
Oregon Code Annotated, Chapter XIII, Sup. of 1935 28
Revised Statutes of Utah, 1933, Chapter 13 28
Remington's Revised Statutes of Washington, Secs. 11200-1 to 11200-70 29
Wisconsin Statutes 1935, Chapter 71 29
Wisconsin Statutes 1935, Section 7040 29

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 647.

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLEE.

DECISION TO BE REVIEWED.

This appeal brings up for review a judgment of the Supreme Court of the State of Minnesota, in which that court overruled the contention of appellant that the taxation by Minnesota of certain stock owned by appellant in state banks in Montana and North Dakota is contrary to the due process clause of the Fourteenth Amendment to the Constitution of the United States (R. 105-118).

THE FACTS.

The case was submitted on an agreed statement of facts (R. 15, 78). Appellant, First Bank Stock Corporation, is a Delaware corporation, with its principal office in Minneapolis, Minnesota (R. 15, 18, 19). Since its organization in 1929 all of its business has been conducted in Minnesota. All meetings of stockholders, directors, and of the executive committee of its board of directors have been held in Minneapolis or St. Paul (R. 21). All of the policies of the appellant were formulated and all its activities were directed from its offices in Minnesota. Its corporate seal was at all times kept at its office in Minneapolis (R. 21). Banks in Minneapolis and St. Paul acted as the transfer agent and registrar of its stock (R. 24). Dividends on its stock were paid from its office there (R. 24).

In April, 1929, the First National Bank in Minneapolis and First National Bank of St. Paul caused a corporation to be organized under the laws of Delaware with the name of First Bank Stock Investment Co., which corporation obtained a license to transact business in Minnesota April 19, 1929 (R. 18). Stock of this corporation was issued in equal proportions to and owned by First Minneapolis Co. and First St. Paul Co., the stock of each of which corporations was owned by trustees for the benefit of persons who were stockholders in the above named banks respectively (R. 18). First Bank Stock Investment Co. during the summer of 1929, acquired for cash a majority of the stock of some 17 national and state banks located in the 9th Federal Reserve District (R. 18). In August, 1929, the corporate name of the corporation was changed to First Bank Stock Corporation, and it made an offer of its stock to the stockholders of First National Bank in Minneapolis, the First National

Bank of St. Paul, Metals Bank & Trust Co. of Butte, Montana, First National Bank of Great Falls, Montana, and Wester National Bank of Missoula, Montana, in exchange for the stock of said banks held by them, which offer was accepted and the exchange consummated on October 31, 1929 (R. 18).

During the fall of 1929 and the year 1930, appellant acquired the stock of approximately 110 banks, trust companies and other financial institutions, all located in the 9th Federal Reserve District, and in the year 1931, the stock of 17 banks was acquired (R. 18-19). Since 1931, appellant has not acquired stock in any additional banks (R. 19). However, appellant has effected certain consolidations and eliminations, with the result that the number of banks in which appellant now holds stock has been reduced to 84, including one trust company (R. 22). Approximately 43 of such banks are located in Minnesota (R. 22).

The stock of such banks and other institutions was acquired in one of two ways, either (1) for cash or by exchange of shares of First Bank Stock Corporation for such shares, or (2) in a number of instances by the organization of new banking institutions, which assumed the liabilities and took over the assets of existing banks and in a few instances by the organization of a new bank which had no connection with any existing banking institution (R. 19, 20). In a majority of such instances all of the stock of such banks or financial institutions was acquired by the appellant, but in some instances the shares acquired were less than all of the outstanding shares (R. 20). Upon acquiring shares in such banks, First Bank Stock Corporation, in most instances, sold qualifying shares to directors and took options to repurchase such shares at cost (R. 20).

Among the banks whose shares were acquired by the ap-

pellant were eight state banks organized under the laws of Montana and North Dakota, taxation of the stock of which is in controversy here (R. 16, 17). These shares are kept at its Minneapolis office. The shares in these banks which were owned by the appellant on May 1, 1934, were assessed to it for that year at the total value of $1,027,095.95 (R. 16).

From about the beginning of 1930 until December 31, 1931, the appellant from its offices in Minnesota periodically examined and audited the banks in which it held stock, received reports of the operations of the banks and advised the banks with reference to accounting practices, the making of loans, the purchase of securities and commercial paper and at times furnished them with advertising material and in a number of instances acted as the agent of the banks in the purchase and sale of securities and commercial paper (R. 20). Shortly prior to January 1, 1932, the appellant caused to be organized a Minnesota corporation under the name of First Service Corporation, which is a wholly owned subsidiary. The appellant then entered into a contract with this subsidiary to perform all the services last mentioned for it in connection with the banks in which it owned stock (R. 21). The principal office of the subsidiary is in Minneapolis, Minnesota (R. 21).

The appellant also owns certain notes receivable which were obtained by it in connection with the sale of stocks owned by it or were purchased from banks in which appellant held stock. Appellant owns and holds certificates of deposit issued by certain member banks and as required by the Banking Act of 1933, holds certain U. S. government and other bonds. The appellant also holds cash which is on deposit in its accounts in two Minnesota banks and owns certain real estate which it obtained by reason of the liquidation of banks in which it formerly held stock. The appellant

owns the stock of two nonbanking corporations, mainly the First Service Corporation above mentioned and First Minneapolis Company, a Minnesota corporation, whose principal activity is the liquidation of real estate acquired and later charged off by First National Bank in Minneapolis (R. 22, 23). The appellant and First Service Corporation occupy the same offices. In 1931 and thereafter, the appellant contributed approximately $8,000,000 to the capital of its various member banks (R. 23-24).

The appellant made a voluntary return to the assessor of the city of Minneapolis of all its taxable money and credits with the exception of the bank stock here in question, in the sum of $2,040,634.05. Thereafter, the city assessor arbitrarily increased the amount of appellant's tax on money and credits by adding thereto the true and full value of the state bank shares in the amount of $1,027,095.05 (R. 15, 16, 17). The latter is the contested item in this case.

SUMMARY OF ARGUMENT.

POINTS.

I.

The right of a state to tax property within its territorial jurisdiction is inherent and an attribute of sovereignty.

II.

This Court, in the process of developing a symmetrical system of preventing multi-state taxation of the same economic interest, has laid down certain rules by which the right of a given state to tax intangibles is to be determined.

III.

The facts in this case bring the property here in question, under the rules as formulated, within the jurisdiction of the State of Minnesota.

(a) The owner has a "commercial domicile" in Minnesota.

(b) The property is physically present in that State.

(c) The owner has given the property a business situs there by employing it within that State, in the conduct of a super banking business, which is a new and important economic unit.

IV.

Minnesota has a constitutional right to tax the property in question.

V.

Appellant's position is untenable in the light of recent decisions of this Court.

VI.

The right to tax stock in state banks rests on fundamentally different considerations from the right to tax national bank stock.

Point I.

The Right of a State to Tax Property Within Its Territorial Jurisdiction Is Inherent and an Attribute of Sovereignty.

This fundamental principle of law was stated by this Court in *Pullman Palace Car Co. vs. Pennsylvania*, 148 U. S. 18, 11 S. Ct. 876, 35 L. Ed. 613, as follows:

> "No general principles of law are better settled or more fundamental than that the legislative power of every State extends to all property within its borders, and that only so far as the comity of that State allows can such property be affected by the law of another State."

Mr. Cooley in his work on Constitutional Law (7th Ed.) on page 678, says:

> "The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading."

Point II.

THIS COURT, IN THE PROCESS OF DEVELOPING A SYMMETRICAL SYSTEM OF PREVENTING MULTI-STATE TAXATION OF THE SAME ECONOMIC INTEREST, HAS LAID DOWN CERTAIN RULES BY WHICH THE RIGHT OF A GIVEN STATE TO TAX INTANGIBLES IS TO BE DETERMINED.

In recent cases it has:

1. Held the doctrine of *mobilia sequuntur personam* applicable to the taxation of intangibles. *Safe Deposit & Trust Co. vs. Virginia*, 280 U. S. 83, 50 S. Ct. 59, 74 L. Ed. 180; *The Farmers Loan & Trust Co. vs. Minnesota*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371; *Baldwin vs. Missouri*, 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056; *Beidler vs. South Carolina Tax Commission*, 282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131; *First National Bank of Boston vs. Maine*, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313.

2. Noted an important exception where property has been given a business situs in another State. *Wheeling Steel Corporation vs. Fox*, 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 1143:

> "Third. The corporation established in West Virginia what has aptly been termed a 'commercial domicile.' It maintains its general business offices at Wheeling and there it keeps its books and accounting records. There its directors hold their meetings and its officers conduct the affairs of the corporation. There, as appellant's counsel well says, 'the management functioned.' The corporation has manufacturing plants and sales offices in other states. But what is done at those plants and offices is determined and controlled from the

center of authority at Wheeling. The corporation has made that the actual seat of its corporate government."

* * * * * * * * *

"In the light of this course of business as shown by the agreed statements of fact, we find no sufficient basis for concluding that the bank accounts thus maintained and controlled were properly attributable to the corporation at any place other than at its general office at Wheeling."

3. Said that when we speak of business situs of intangible property in the taxing State "we express the idea of localization by virtue of the attribute of the intangible right in relation to the conduct of affairs at a particular place. The right may grow out of the actual transactions of a localized business or the right may be identified with a particular place because the exercise of the right is fixed exclusively or dominantly at that place. In the latter case the localization for the purpose of transacting business may constitute a business situs quite as clearly as the conduct of the business itself." *People of State of New York ex rel. Whitney vs. Graves, et al.*, ... U. S. ...., 57 S. Ct. 237, ... L. Ed. ..... (Decided January 4, 1937.)

4. Rejected the contention that the situs of intangibles is fixed at the location of the property out of which the intangible rights arose. *Farmers Loan & Trust Co. vs. Minnesota*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371.

In this connection the Minnesota Supreme Court in this case said:

"Stock shares no less than corporate bonds are choses in action attended by obligations of the corporation to the owners of them. Stock certificates evidence those duties as truly as do bonds the promise to pay principal

and interest. In both, the corporation is the obligor, the holders the obligees. As to corporate bonds, the chartering state cannot tax them when owned beyond its own boundaries. It cannot give them a situs for taxation apart from the domicile of the owner.

How are stock and stock certificates so different that state power may do for and with them what it cannot do for and with bonds? If it cannot by a mere legislative assertion localize the bonds for taxation, upon what theory—under what formula—may it localize the stock for the same purpose? Even if realism be frankly discarded and fictions avowedly made the media of reasoning, it is apparent that any allowable fiction that fits either bonds or stocks is equally apt for the other" (R. 113, 114).

To this the case of *Senior vs. Braden,* 295 U. S. 422, 55 S. Ct. 800, 79 L. Ed. 1520, is not opposed, for the reason that it was held in that case that the trust certificates there under consideration represented interests in real estate and accordingly were taxable only in the state in which the real estate was located.

5. Affirmed the doctrine of *Hawley vs. City of Malden,* 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, to the effect the jurisdiction to tax intangibles is not dependent upon the situs of the tangible property of a corporation. *Virginia vs. Imperial Coal Sales Co.,* 293 U. S. 15, 55 S. Ct. 14, 79 L. Ed. 171.

Point III.

The Facts in This Case Bring the Property Here in Question, Under the Rules as Formulated, Within the Jurisdiction of the State of Minnesota.

1. In regard to the character and localization of the appellant's business in the State of Minnesota, the State Court found as facts:

> "Defendant is a Delaware corporation admitted to this state (misquoted in record as domiciled in this state), with its principal office here. It owns all or a majority of the stock in about 84 national and state banks in the Ninth Federal Reserve District. These are its subsidiaries, managed by it from its principal office in Minneapolis. Their stocks are not held by defendant merely for investment. They are not dealt in or traded, but were acquired and are owned for the purpose of giving defendant plenary control over the banks. The subsidiaries are colloquially and politically characterized as 'chain banks.' They are managed, supervised, and periodically examined by defendant. It selects all their officers and dictates all their policies. Another subsidiary corporation or two are mentioned in evidence and argument, but there is nothing about them to change the essential facts concerning defendant's ownership and use of its bank stocks.
>
> Whatever may be said of its properties separately considered, defendant's business is a very important economic unit, which, as to headquarters and management, is localized in Minnesota, wherein also are many banks, both state and national, which it controls through stock ownership. Its corporate seal is kept at its Min-

neapolis office. All meetings of its stockholders, board of directors, and executive committee are held in Minneapolis or St. Paul. The certificates for its stocks in subsidiary banks are all kept at the Minneapolis office. Defendant regularly returns for taxation all its taxable money and credits, other than the stocks in state banks of other states. As to the latter, it denies that Minnesota has the power to tax them or itself as owner of them.

Presently involved are the stocks of six Montana and two North Dakota state banks. (The case is unembarrassed by any problem peculiar to the taxation of shares in national banks.) Defendant owns, as it does in most cases, all their stock, except qualifying shares in the ownership of the few directors and officers necessarily resident at the domicile of each bank. Even such shares are held by the owners subject to an option in defendant to repurchase at will" (R. 106-107).

Further, "Defendant in its corporate person is within its jurisdiction and subject to the state's taxing power" (R. 108).

A particularly important feature of the appellant enterprise as conducted in the State of Minnesota is that it employs its ownership of the stocks of the various banks in Minnesota, Montana and North Dakota in the operation of a super banking institution from its general offices in Minnesota. In connection with this integrated or unitary use of the stocks of the several banks, the Supreme Court of the State of Minnesota said:

"There is another and important feature of this case, not present in the inheritance tax cases. It is that the stocks of the eight Montana and North Dakota state

banks, upon which this state seeks to levy a money and credits tax, have, by reason of their ownership and use by defendant, with the stocks in 76 other banks, an importance in use and value, local in nature, which they would not possess if the stock in each of defendant's subsidiary banks were considered in isolation as a unit by itself. The stocks in defendant's subsidiaries, themselves numerous and scattered widely through the Ninth Federal Reserve District, have been amalgamated into a superbanking and economic unit in defendant's ownership and control. Thereby, there has arisen a new power over the banking activities and interests of a large and important area. Whatever the increment of value resulting therefrom, it is undeniable that together they make a new unit of highly important and valuable property, integrated and with a situs here or nowhere" (R. 111, 112).

The State Court further refers to "The established local business situs of defendant's bank stocks and their unitary use" (R. 112). And again after referring to the fact that the bank stocks are owned here, says in this connection: "More important is the fact that they are here an integrated part, and the main one, of a distinctly localized unit of business, property and value" (R. 112, 113).

It is the appellee's contention that these facts bring this case clearly within the doctrine of *People of State of New York ex rel. Whitney vs. Graves, supra,* where this Court said: "When we speak of a 'business situs' of intangible property in the taxing state we are indulging in a metaphor. We express the idea of localization by virtue of the attributes of the intangible right in relation to the conduct of affairs at a particular place. The right may grow out

of the actual transactions of a localized business or the right may be identified with a particular place because the exercise of the right is fixed exclusively or dominantly at that place."

In so far as the rights of the appellant in the stocks of the various banks are employed in this new unit of business, they are employed solely within the state of Minnesota. And we think it is fair to say that of particular importance to the appellant is the right to control the operation of the banks through the unitary employment of the certificates, which right is exercised exclusively in the State of Minnesota. From this the Supreme Court of the State of Minnesota concluded: "If stocks can ever have an actual or 'business situs' in a State other than that of the corporation itself, there is such a situs of defendant's shares in Minnesota" (R. 111). And that such shares in their integrated and unitary use and employment have a "situs here or nowhere" (R. 112).

2. The rules, so far laid down by this Court for the purpose of determining the jurisdiction of a state to tax intangibles, operate to the exclusion of a similar right in other states in the particular circumstances considered in those cases, and while the ultimate result may be that no two states can tax the same economic interest as represented by an intangible right, that result has not as yet been reached in the process, unless the language of the Wheeling case is to be so construed. It is true in that case this Court said "And having thus determined 'that in general intangibles may be properly taxed at the domicile of their owner,' we have found 'no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles.'" And in *State*

of New York ex rel. Whitney vs. Graves, supra, in referring to *Citizens National Bank vs. Durr,* 257 U. S. 99, 42 S. Ct. 15, 66 L. Ed. 149, said "and what the court said with respect to double taxation must be read in the light of the decisions in *Farmers Loan & Trust Co. vs. Minnesota, supra,* and later cases upon that point." Yet it has not said that under no circumstances may the same economic interest be taxed in more than one state.

The instant case is illustrative of the manner in which the same economic interest may be differently employed. In the hands of an individual owner a certificate of stock in one of these banks would have certain well defined rights and attributes. The same certificate owned together with a majority of shares in the several banks and controlled by a corporation such as the one under consideration, takes on as incidents of ownership much greater if not entirely new rights and attributes.

If reference to the "dominant attribute" of intangibles in *Whitney vs. Graves* indicates that this Court will search out the dominant attribute of an intangible, and having determined the place where that attribute is principally exercised or employed, fix the "business situs" at that place, then we feel that the judgment of the State Court in this case must necessarily be affirmed.

The situs of the bank stocks owned by the appellant certainly are as completely localized in Minnesota as were the securities held to have a situs in Pennsylvania in *De Ganay vs. Lederer,* 250 U. S. 376, 39 S. Ct. 524, 63 L. Ed. 1042.

No doubt the broad doctrine of the case of *Corry vs. Baltimore,* 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556, will have to be revised if not overruled in the light of the recent decisions of this Court. In this connection, in deciding the instant case, the Supreme Court of Minnesota said:

"The power of the domiciliary state to subject nonresident owners of corporate stock to taxation rests upon its supposed power (sustained in *Corry vs. Baltimore*, 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556), in creating the corporation, to fix 'the situs' of all its stock, wherever owned, for purposes of taxation. If it may so establish one situs, why may it not be made the only one?

If the domiciliary states have the power, by taxing the shares in their corporations, to exclude all taxation thereof by other states wherein the owners reside, why may they not do so by exempting such shares from all taxation? Suppose, for example, that Montana and North Dakota, instead of taxing bank stocks, taxed only the corporations as such and expressly had declared that the shares should be exempt. It is a question of the reach of sovereign power, and, whatever sovereign power may do by affirmation, it should be able to accomplish by equally significant negation.

If the home state may fix a situs for property taxation, why may it not do that same for excises? Why may it not declare that it shall be the only state to tax the transfer of stock on the death of even nonresident owners? That it cannot do so now seems to be established. It has never been suggested that the home state could declare itself the only one to take by escheat the shares of nonresident owners dying intestate and without heirs. Equally beyond the scope of legal thought, is the idea that a state may so monopolize the situs of stocks as to declare that, wherever owned, they will descend, on the death of the owner, under its own law and no other.

The domiciliary state of a corporation, of course, may

tax it as a corporation. The company and its local property of all sorts are taxable in the home state. But, if that state may tax also the special property of non-residents in their shares, it is by so much taxing property and persons beyond its jurisdiction. In such case, the home state is in fact taxing beyond its boundaries unless the foreign holders of the shares have no property therein which they can carry with them anywhere, for any purpose, beyond the territory of that state.

But, it may be rejoined, a state upon enfranchising a corporation may condition as it wishes all corporate activities and all use and ownership of its shares. So it may if there are no limits to its power. Let it be supposed there are none as to the corporation itself, which is made a legal person by and of the state of incorporation. But what of shareholders in other states? The domiciliary state cannot tax them *in personam*, in respect to and on their separate interests, unless it may so condition the issue of shares by the corporation. It may condition issue, transfer, and ownership of shares within constitutional limits. But, is it not going beyond its jurisdiction by imposing a condition which is intended to operate, and in practice can operate, only on subjects, property and its owners, in other states?

How far may a state condition a corporation it enfranchises and the stock and stockholders therein? It may limit powers and confine their exercise to its own domain. But if it permits its corporation to go into other states, corporate action in the latter will be governed by local law. The original, domiciliary limitations of its power is congenital and inescapable. But in other respects a corporation does escape the laws of its home state whenever it becomes domiciled in another.

For the home state by the act of incorporation to attempt to permit its corporations to go into others and there to deny their jurisdiction, as by resisting otherwise appropriate taxation, would be plainly *ultra vires*.

Suppose, for example, a state says to its corporations: "You must pay a tax on all your tangible property wherever owned; subject to that condition, go into another state and do business there." Suppose the corporation does so and acquires tangible property in another state and keeps it there, its actual physical situs and use there and there only. It cannot escape taxation there. Must it pay also at home? Obviously not. Either a state must keep its corporations at home, or, permitting them to roam into other states, must acknowledge for the laws of the latter their full reach to and effect upon all proper subjects. If the state of incorporation cannot so condition its corporations going into other states, how may it impose similar conditions upon stockholders and their property beyond its own jurisdiction?" (R. 114, 115, 116).

Point IV.

Minnesota Has a Constitutional Right to Tax the Property in Question.

"The jurisdiction of Minnesota to tax at all is challenged, and the supporting argument must rest, finally, not so much upon the fact of taxation in other states as on their supposed exclusive power to tax, whether exercised or not, and in the supposed lack of power in Minnesota to tax at all." Op. Minn. Supreme Court (R. 109).

In *Hawley vs. Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, the question presented was whether the taxation of shares of stock owned by a resident of Massachusetts, in a foreign corporation, which did no business and had no property in that state, was a denial of due process. It was decided in the negative. A distinction was drawn by the court between the property of the shareholders in their shares and that of the corporation itself. The former "may be separately taxed." The court sustained the power of the state of the owner's domicile to tax the shares and adopted "the view that shares are personal property, and, having no situs elsewhere, are taxable by the state of the owner's domicile, whether the corporations be foreign or domestic." The contention that the shares were "taxable solely in the state of incorporation" was rejected and the power of the state of the owner's domicile to tax them sustained.

In commenting on the case of *Hawley vs. Malden*, the Supreme Court of Minnesota said:

> "Upon the question of situs, we shall have more to say later, but in *Hawley vs. Malden, supra*, the court said: 'When we are dealing with the intangible interest of the shareholder, there is manifestly no question of physical situs, so far as this distinct property right is concerned, and the jurisdiction to tax it is not dependent upon the location of the lands and chattels of the corporation.'
>
> Further, in respect to corporate shares, the court held that, as choses in action such shares 'in the absence of legislation prescribing a different rule * * * are appropriately related to the person of the owner, and, being held by him at his domicile, constitute property with respect to which he is under obligation to con-

tribute to the support of the government whose protection he enjoys.'

Upon the authority of *Hawley vs. Malden*, and deciding the question strictly as one of federal constitutional law, we hold that the taxation in Minnesota, as attempted under our money and credits tax law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process. *Bristol vs. Washington County*, 177 U. S. 133, 20 S. Ct. 585, 44 L. Ed. 701; *New Orleans vs. Stempel*, 175 U. S. 309, 20 S. Ct. 110, 44 L. Ed. 174; *Metropolitan Life Ins. Co. vs. New Orleans*, 205 U. S. 395, 27 S. Ct. 499, 51 L. Ed. 853" (R. 109, 110).

Further, in this connection the Supreme Court of Minnesota in deciding this case said:

"If stocks can ever have an actual or 'business situs' in a state other than that of the corporation itself, there is such a situs of defendant's shares in Minnesota. 'It is difficult to conceive how property could be more completely localized.' See *De Ganay vs. Lederer*, 250 U. S. 376, 39 S. Ct. 524, 526, 63 L. Ed. 1042, where the 'localized' securities were in the possession and management of an agent in the United States for a nonresident alien owner. We stress again the real distinction between the incorporeal rights evidenced by the stock certificates, and the stock certificates themselves, the former being intangible and the latter tangible and dealt with as such. Compare *First Trust Company of St. Paul vs. Matheson*, 187 Minn. 468, 246 N. W. 1, 87 A. L. R. 478, holding that bonds payable to bearer are so far tangibles as to be properly subject to an action *quasi in rem* here. Under the rules of that case, and the others

therein cited, particularly *Hamilton vs. Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691, there seems to be no question that, if the stocks in question were owned by an individual resident of Minnesota, and he should die here, intestate and without heirs, Minnesota jurisdiction would be the only one capable of adjudging the escheat of the certificates and the property rights thereby evidenced" (R. 111).

And again:

"The established local business situs of defendant's bank stocks and their unitary use here in a new integer of business and property furnish all the basis needed to support the challenged tax, for which we hold defendant liable" (R. 112).

To the extent that the situs of stock of a corporation has been localized in another state, it may be necessary to alter the doctrine of *Corry vs. Baltimore*.

"Exploring further defendant's argument anent double taxation, one answer is that there is no constitutional prohibition of duplicate taxation. There is a difference between twice taxing the same event which can happen in but one state, and twice taxing the same property, once in respect to an interest, or quality, or susceptibility, especially related to one jurisdiction, and again in respect to another as clearly related to the second taxing power.

The present trend of our law is against multiple state taxation of intangibles. If 'the employment of the due process clause of the Fourteenth Amendment to eliminate the multi-state taxation of intangible personalty' (Rottschafer, State Jurisdiction to Impose Taxes, 42 Yale Law Journal 305 (307), is to continue and evolve

into a symmetrical plan barring such taxation, there must be a re-examination, and probably an end of the present practice of states taxing the shares of their corporations in the ownership of nonresidents. Such levies, extraterritorial in practical effect, are an anomaly if not in fact *ultra vires.*"

Opinion of the Supreme Court of Minnesota (R. 113).

Point V.

Appellant's Position Is Untenable in the Light of Recent Decisions of This Court.

The decisions of this Court in *Farmers Loan & Trust Co. vs. Minnesota*, 280 U. S. 204, 50 S. Ct. 98, 74 L. Ed. 371; *First National Bank of Boston vs. Maine*, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313; *Wheeling Steel Corporation vs. Fox*, 298 U. S. 193, 56 S. Ct. 773, and *State ex rel. Whitney vs. Graves*, 57 S. Ct. 237 (January 4, 1937), in particular, discussed under point 2 of this brief, we believe, fully sustain this contention.

In effect the position of the appellant is that the situs of stock in state banks at the place of incorporation is constitutionally superior to that of the place where the stock is owned, controlled and employed, so that its taxation in the latter place violates the due process clause of the 14th Amendment to the Federal Constitution.

Appellant contends that the exception to the domiciliary rule in favor of the place of business situs so clearly announced in the Wheeling case should have appended to it an exception to the effect that state bank shares are taxable only in the state where the bank is incorporated.

A practical consideration in this connection is whether the court in construing the due process clause of the constitu-

tion is to classify corporations according to the character of their business activities and say that the stock of some is taxable only in the state of incorporation and of others at the domicile of the owner or the place where the stock has been given a business situs.

The appellant recognized the fact that its assets had a business situs in Minnesota by returning for taxation all of its taxable money and credits, except the stock held by it in state banks. This is a significant recognition of the state's claim,

The position of the appellant in this case is quite analogous to that taken by the State of Minnesota and overruled by this Court in the Farmers Loan & Trust Company case. In that case the State of Minnesota contended that certain bonds and certificates of indebtedness issued by the State of Minnesota and some of its municipalities were subject to an inheritance tax although the owner was domiciled in New York, on the ground that the State of Minnesota protected the debt, compelled its payment and permitted its transfer.

This Court very early held the bonds of a corporation owned and held by nonresidents at their domiciles in other states are beyond the taxing power of the chartering state. *Cleveland, Paynesville & Ashtabula R. R. Co. vs. Pennsylvania*, 82 U. S. (15 Wall.) 300, 21 L. Ed. 170.

As the Supreme Court of the State of Minnesota pointed out in deciding the instant case:

> "Stock shares no less than corporate bonds are choses in action attended by obligations of the corporation to the owners of them. Stock certificates evidence those duties as truly as do bonds the promise to pay principal and interest. In both, the corporation is the obligor, the holders the obligees. As to corporate bonds, the

chartering state cannot tax them when owned beyond its own boundaries. It cannot give them a situs for taxation apart from the domicile of the owner.

How are stock and stock certificates so different that state power may do for and with them what it cannot do for and with bonds? If it cannot by a mere legislative assertion localize the bonds for taxation, upon what theory—under what formula—may it localize the stock for the same purpose? Even if realism be frankly discarded and fictions avowedly made the media of reasoning, it is apparent that any allowable fiction that fits either bonds or stocks is equally apt for the other" (R. 113, 114).

The arguments of practicability and convenience advanced by appellant under the circumstances of this case in view of the rules relating to the taxation of intangibles laid down by this Court are more properly addressed to the legislative than to the judicial branch of the government. Practicability and convenience no doubt may be properly taken into consideration in formulating rules of construction, but certainly cannot themselves be made the rule on which the constitutional right of a State to tax is to depend.

This Court is now engaged in the development of a symmetrical system of preventing multi-state taxation of the same economic interest. As pointed out by the Supreme Court of the State of Minnesota in its opinion in this case: "The asymmetry results from the inclusion in the tax structure of permission to a state, in organizing a corporation, to resort to an expedient of condition or regulation which in fact projects its own jurisdiction to property and persons beyond its boundaries" (R. 116).

Point VI.

The Right to Tax Stock in State Banks Rests on Fundamentally Different Considerations From the Right to Tax National Bank Stock.

1. The plain distinction between the taxation of stock in national banks and that of state banks is that the right of the states to tax the stock of national banks exists only by virtue of the permissive act of Congress, while the right to tax the stock of state banks is inherent in the state in which its owner is domiciled or has given it a business situs.

The right to tax national bank stock rests solely on the permissive act of Congress. Mere silence on the subject would be prohibitive. *First National Bank vs. Richmond,* 39 Fed. 309; appeal dismissed, 13 S. Ct. 1044, 149 U. S. 769, 37 L. Ed. 959; *First National Bank of Guthrie Center vs. Anderson,* 46 S. Ct. 135, 269 U. S. 341, 70 L. Ed. 295; *State vs. First National Bank,* 204 N. W. 874, 205 N. W. 375, 164 Minn. 235.

The Federal law on this subject was not intended to control the power of the state on the subject of taxation, but to protect the capital invested in national banks from unfriendly discrimination by the states in the exercise of taxing powers. *Adams vs. Nashville,* 95 U. S. 19, 20, 24 L. Ed. 369; *Mercantile National Bank vs. City of New York,* 28 Fed. 776; affirmed, 7 S. Ct. 826, 121 U. S. 138, 30 L. Ed. 895. It was intended to comprehensively control the subject with which it dealt and thus to furnish the exclusive law governing state taxation as to the federal agencies created by Congress. *Bank of California, National Association, vs. Richardson,* 248 U. S. 476, 39 S. Ct. 165, 63 L. Ed. 372.

"The purpose of the restriction (contained in this section as to the state authority to tax national banks) is to render impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking."

First National Bank vs. Anderson, 46 S. Ct. 135, 269 U. S. 341, 70 L. Ed. 295.

On the other hand the power of the state to tax property within its jurisdiction except property of the United States and its agencies is inherent.

2. Not by holding that state bank shares can be taxed at the place of incorporation will this Court eliminate the present confusion in the taxation of state and national bank shares.

Ever since the decision of this Court in *Merchants National Bank vs. Richmond* (June 6, 1921), 256 U. S. 635, 41 S. Ct. 619, 65 L. Ed. 1135, the taxation of the interest of stockholders in national banks by the states has been greatly confused. This confusion apparently resulted from the fact that prior to the decision in that case, the states apparently assumed that the only uniformity required was between the taxation of national bank shares and state bank shares. That the requirement of uniformity extended to "other moneyed capital in the hands of individual citizens of such state coming into competition with the business of national banks" apparently was overlooked and appears now to be overlooked by the appellant in this case.

The decision of this Court in the Richmond case was followed by several others, in which the laws of many states

relating to that subject of taxation were held invalid, on the grounds that they were discriminatory. (Minnesota) *State vs. First National Bank,* 273 U. S. 561, 47 S. Ct. 468, 71 L. Ed. 774; (Iowa) *First National Bank vs. Anderson,* 269 U. S. 341, 46 S. Ct. 135, 70 L. Ed. 295; (Oregon) *Brotherhood Co-op. National Bank vs. Hurlburt,* 21 Fed. (2d) 85; (Florida) *Roberts vs. American National Bank of Pensacola,* 97 Fla. 411, 121 So. 554; (Montana) *Commercial National Bank vs. Custer County,* 275 U. S. 502, 48 S. Ct. 155, 72 L. Ed. 395; (Wisconsin) *First National Bank vs. Hartford,* 273 U. S. 548, 47 S. Ct. 462, 71 L. Ed. 767; (Kansas) *Central National Bank of Topeka vs. MacFarland,* 20 Fed. (2d) 416, affirmed (C. C. A. 1928) 26 Fed. (2d) 890, certiorari denied 278 U. S. 606, 49 S. Ct. 12, 73 L. Ed. 533.

It is a well known fact that some of the states, of which Minnesota is one, have no valid legislation at the present time for the taxation of the interest of shareholders in national banks. Since the decision of this Court in *State vs. First National Bank,* 273 U. S. 561, *supra,* the State of Minnesota has not revamped its tax laws to conform with the holding of this Court in that case. (Taxation of bank stock, Sections 2026-1 to 2026-4, *Mason's Minnesota Statutes 1927;* mortgage registration tax, Section 2322, *Mason's Minnesota Statutes 1927;* money and credits tax, Section 2337, *Mason's Minnesota Statutes 1927.*)

Section 5219, Revised Statutes of the United States, as amended (since the Richmond case was decided), now permits the states to tax the interest of stockholders in national banks, by providing that, subject to certain conditions, "The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by

their net income, * * *." (Appendix 1.)

As a matter of fact the most orderly and uniform method of taxing the interest of stockholders in national and state banks and "other moneyed capital in the hands of individual citizens * * * coming into competition with the business of national banks" appears to be on an income basis. This is the method now employed by the following states which have made the most progress in bringing about complete uniformity in the matter of such taxation:

Alabama:

General Acts of Alabama, 1935, Act. No. 194 (Article XII, p. 428).

California:

General Laws of California, 1931 Deering Act 8488.

For amendments see 1933 Deering Sup., 1935 Deering Sup.

Idaho:

Chapter 159, Session Laws 1933.

Massachusetts:

Chapter 63, 1936 Cum. Sup.

Annotated Laws of Mass. (Vol. 2).

New York:

McKinney's Consolidated Laws of New York.

Book 59, Art. 9-C.

Oklahoma:

Session Laws 1935, Chapter 66, Article 6.

Oregon:

Chapter XIII, Oregon Code Annotated, Sup. of 1935.

Utah:

Revised Statutes of Utah, 1933, Chapter 13.

Washington:

Sections 11200-1 to 11200-70, Remington's Revised Statutes of Washington. (Law held unconstitutional as a property tax for lack of uniformity under Wash. Const. *Jensen vs. Henneford,* 85 Wash. Dec. 182, 53 Pac. (2nd) 607.)

Wisconsin:

Wisconsin Statutes 1935, Chapter 71; Wisconsin Statutes 1935, Section 7040.

Should the state of incorporation ultimately be denied the right to tax the stock of state banks under the circumstances that exist in this case, it will not be deprived of revenue from those banks. It may still tax the real estate, personal property and income of the corporations. This is also true as to the real estate and income of national banks. (See Appendix 1.) In this connection the Minnesota Supreme Court said:

> "The domiciliary state of a corporation, of course, may tax it as a corporation. The company and its local property of all sorts are taxable in the home state. But, if that state may tax also the special property of nonresidents in their shares, it is by so much taxing property and persons beyond its jurisdiction. In such case, the home state is in fact taxing beyond its boundaries unless the foreign holders of the shares have no property therein which they can carry with them anywhere, for any purpose, beyond the territory of that state" (R. 114, 115).

It must not be overlooked that the Congress can, at any time, change the law relating to the taxation of national banks and the interests of stockholders therein by altering the method or completely withdrawing the right, and thus

it may, at any time, upset any system of uniformly taxing national and state banks which presently may be established.

INCREMENT THROUGH AMALGAMATION.

It is plain that the Minnesota Supreme Court in referring to "increment of value" resulting from the employment of the shares by appellant in setting up a super banking institution (R. 111, 112), merely intended to emphasize the unitary use of the shares of stock as employed by the appellant in Minnesota, and to indicate that while such increment as arises out of that situation is not separately taxed in this case, it may, however, enter into the valuation of the stock as employed and taxed in that State.

When the Minnesota Supreme Court said, "We do regard as unimportant the fact that much of the supervision formerly exercised by respondent directly has been taken over by its wholly owned subsidiary, the 'First Service Corporation'" (R. 118), it evidently meant to indicate that the supervision of the banks was still exercised by the First Bank Stock Corporation through the subsidiary.

Appellee respectfully urges that the judgment of the State Court should be affirmed.

All of which is respectfully submitted:

WILLIAM S. ERVIN,
Attorney General of Minnesota,
MATHIAS N. ORFIELD,
Deputy Attorney General,
State Capitol, St. Paul, Minnesota,
Attorneys for Appellee.

FRANK J. WILLIAMS,
Minneapolis, Minnesota,
Of Counsel.

APPENDIX.

Taxation of National Banks.

Section 548, Title 12, U. S. C. A. (Revised Statutes, Sec. 5219, as amended Mar. 4, 1923, C. 267, 42 Stat. 1499, and as amended Mar. 25, 1926, C. 88, 48 Stat. 223.)

"548. State taxation.

The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: Provided, that bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on or according to or measured

by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources, but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: Provided, however, that a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in

any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

4. The provisions of Section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R. S. §5219; Mar. 4, 1923, C. 267, 42 Stat. 1499; Mar. 25, 1926, C. 88, 44 Stat. 223.)"

SUPREME COURT OF THE UNITED STATES.

No. 647.—October Term, 1936.

First Bank Stock Corporation, Appellant, *vs.* State of Minnesota. } Appeal from the Supreme Court of the State of Minnesota.

[April 26, 1937.]

Mr. Justice Stone delivered the opinion of the Court.

This appeal from a judgment of the Supreme Court of Minnesota, Judicial Code, § 237, involves the question whether appellant, a Delaware corporation doing business in Minnesota, may be required, consistently with the due process clause of the Fourteenth Amendment, to pay a property tax laid by Minnesota upon appellant's shares of stock in Montana and North Dakota state banking corporations.

The trial court concluded that, as the shares are lawfully taxed by Montana and North Dakota, it would be a denial of due process to tax them in Minnesota. The Supreme Court of the state reversed, holding that as appellant has acquired a commercial domicil within the state, and as its shares in the Montana and North Dakota banks are assets of the business carried on by appellant in Minnesota, they are rightly taxed there rather than in Montana or North Dakota. — Minn. —.

Appellant is qualified to do business in Minnesota, and in fact transacts its corporate business and fiscal affairs there. It maintains a business office within the state and holds there its meetings of stockholders, directors and their executive committee. It is the owner of a controlling interest in the stock of a large number of banks, trust companies and other financial institutions, located in the Ninth Federal Reserve District. The stock certificates are kept in Minnesota, where appellant receives dividends declared by its subsidiaries, and where it declares and disburses dividends upon its own stock.

Through a wholly-owned subsidiary corporation, organized and doing business in Minnesota, it maintains a compensated service

for the banks which it controls. It offers advice as to their accounting practices, makes recommendations concerning loans, commercial paper and interest rates, and makes suggestions regarding their purchase and sale of securities. It also plans for them advertising campaigns, and supplies advertising material. Appellant thus maintains within the state an integrated business of protecting its investments in bank shares, and enhancing their value, by the active exercise of its power of control through stock ownership of its subsidiary banks.

Appellant is to be regarded as legally domiciled in Delaware, the place of its organization, and as taxable there upon its intangibles, see *Cream of Wheat Co.* v. *Grand Forks*, 253 U. S. 325, 328; *Johnson Oil Refining Co.* v. *Oklahoma*, 290 U. S. 158, 161; *Virginia* v. *Imperial Coal Sales Co.*, 293 U. S. 15, 19, at least in the absence of activities identifying them with some other place as their "business situs." But it is plain that the business which appellant carries on in Minnesota, or directs from its offices maintained there, is sufficiently identified with Minnesota to establish a "commercial domicil" there, and to give a business situs there, for purposes of taxation, to intangibles which are used in the business or are incidental to it, and have thus "become integral parts of some local business." *Wheeling Steel Corporation* v. *Fox*, 298 U. S. 203, 210; see *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204, 213; *Beidler* v. *South Carolina Tax Commission*, 282 U. S. 1, 8; *First National Bank* v. *Maine*, 284 U. S. 312, 331.

The doctrine that intangibles may be taxed at their business situs, as distinguished from the legal domicil of their owner has usually been applied to obligations to pay money, acquired in the course of a localized business. *New Orleans* v. *Stempel*, 175 U. S. 309; *Bristol* v. *Washington County*, 177 U. S. 133; *Board of Assessors* v. *Comptoir National*, 191 U. S. 388; *Metropolitan L. Ins. Co.* v. *New Orleans*, 205 U. S. 395; *Wheeling Steel Corporation* v. *Fox*, *supra*, 212, 213. But it is equally applicable to shares of corporate stock which, because of their use in a business of the owner, may be treated as localized, for purposes of taxation, at the place of the business, see *First National Bank* v. *Maine*, *supra*, 331; cf. *De Ganay* v. *Lederer*, 250 U. S. 376, 382. Appellant's entire business in Minnesota is founded on its ownership of the shares of stock and their use as instruments of corporate control. They are as much "integral parts" of the local business as accounts receivable in a merchandis-

ing business, or the bank accounts in which the proceeds of the accounts receivable are deposited upon collection. Compare *Wheeling Steel Corporation* v. *Fox, supra,* 212-214. Thus identified with the business conducted by appellant in Minnesota, they are as subject to local property taxes as they would be if the owner were a private individual domiciled in the state.

Appellant does not deny that it is subject to taxation in Minnesota on some intangibles. In making its 1934 return of "moneys and credits" for taxation under Minn. Stat. 1927 (Mason) § 2337 *et seq.*, which imposes the present tax, appellant included bank deposits within and without the state, promissory notes, bonds and other evidences of indebtedness. It does not challenge the tax imposed on its shares of stock in corporations organized and doing business without the state, other than those in the Montana and North Dakota banks. It says that these states have adopted the only feasible scheme of taxation of the shares of state banks which will admit of a state property tax on national bank shares, since R. S. § 5219 (12 U. S. C. § 548), permits shares of national banks to be taxed only by the state where the bank does business, and then only if they are not assessed "at a greater rate than . . . other moneyed capital in the hands of individual citizens . . . coming into competition with the business of national banks." See *First National Bank* v. *Anderson,* 269 U. S. 341, 348; *Minnesota* v. *First National Bank,* 273 U. S. 561. Both states assess for property taxation the shares of national banks doing business within their limits and assess in like manner the shares of state banks, and thus avoid discrimination in taxation between the shares of national and of state banks.

Appellant argues that every state may establish a tax situs within the state for shares of stock in its own banking corporations, and that Montana and North Dakota have done so by providing, in pursuance of their scheme for the local taxation of banking corporations, that the shares shall be taxable there. *Corry* v. *Baltimore,* 196 U. S. 466; see *National Bank* v. *Commonwealth,* 9 Wall. 353; *Tappan* v. *Merchants' National Bank,* 19 Wall. 490; *Rhode Island Trust Co.* v. *Daughton,* 270 U. S. 69, 81. It insists that as the shares are properly taxable by the respective states of their origin, and as due process forbids the imposition of a property tax upon intangibles in more than one state, they cannot be taxed in Minnesota.

The logic is inexorable if the premises are accepted. But we do not find it necessary to decide whether taxation of the shares in Montana or North Dakota is foreclosed by sustaining the Minnesota tax. Nor need we inquire whether a non-resident shareholder, by acquiring stock in a local corporation, so far subjects his investment to the control and laws of the state which has created the corporation as to preclude any objection, on grounds of due process, to the taxation of the shares there, even though they are subject to taxation elsewhere, at their business situs.[1] We leave those questions open. It is enough for present purposes that this Court has often upheld and never denied the constitutional power to tax shares of stock at the place of the domicil of the owner. *Hawley* v. *Malden*, 232 U. S. 1, 11, 12; *Klein* v. *Board of Tax Supervisors*, 282 U. S. 19, 24; *Wright* v. *Louisville & Nashville R. Co.*, 195 U. S. 219; *Kidd* v. *Alabama*, 188 U. S. 730; *Darnell* v. *Indiana*, 226 U. S. 390. And it has fully recognized that the business situs of an intangible affords an adequate basis for fixing a place of taxation. See *Wheeling Steel Corporation* v. *Fox*, *supra*; *De Ganay* v. *Lederer*, *supra*; cf. *Safe Deposit & T. Co.* v. *Virginia*, 280 U. S. 83, 91.

The rule that property is subject to taxation at its situs, within the territorial jurisdiction of the taxing state, readily understood and applied with respect to tangibles, is in itself meaningless when applied to intangibles which, since they are without physical characteristics, can have no location in space. See *Wheeling Steel Corporation* v. *Fox*, *supra*, 209. The resort to a fiction by the attribution of a tax situs to an intangible is only a means of symbolizing, without fully revealing, those considerations which are persuasive grounds for deciding that a particular place is appropriate for the imposition of the tax. *Mobilia sequuntur personam*, which has won unqualified acceptance when applied to the taxation of intangibles, *Blodgett* v. *Silberman*, 277 U. S. 1, 9-10, states a rule without disclosing the reasons for it. But we have recently had occasion to

[1] See Corry v. Baltimore, 196 U. S. 466, 476, 477; Tappan v. Merchants' National Bank, 19 Wall. 490, 499, 500; Flash v. Connecticut, 109 U. S. 371, 377; Whitman v. Oxford National Bank, 176 U. S. 559, 564; Hancock National Bank v. Farnum, 176 U. S. 640, 643; Nashua Savings Bank v. Anglo-American Co., 189 U. S. 221, 230; Canada So. Ry. Co. v. Gebhard, 109 U. S. 527, 537; Relfe v. Rundle, 103 U. S. 222, 226; Bernheimer v. Converse, 206 U. S. 516, 533; Converse v. Hamilton, 224 U. S. 243, 260; Clark v. Williard, 292 U. S. 112, 121; Royal Arcanum v. Green, 237 U. S. 531, 542; Modern Woodmen of America v. Mixer, 267 U. S. 544, 551; Broderick v. Rosner, 294 U. S. 629, 643.

point out that enjoyment by the resident of a state of the protection of its laws is inseparable from responsibility for sharing the costs of its government, and that a tax measured by the value of rights protected is but an equitable method of distributing the burdens of government among those who are privileged to enjoy its benefits. See *New York ex rel. Cohn* v. *Graves,* decided March 1, 1937.

The economic advantages realized through the protection, at the place of domicil, of the ownership of rights in intangibles, the value of which is made the measure of the tax, bear a direct relationship to the distribution of burdens which the tax effects. These considerations support the taxation of intangibles at the place of domicil, at least where they are not shown to have acquired a business situs elsewhere, as a proper exercise of the power of government. Like considerations support their taxation at their business situs, for it is there that the owner in every practical sense invokes and enjoys the protection of the laws, and in consequence realizes the economic advantages of his ownership. We cannot say that there is any want of due process in the taxation of the corporate shares in Minnesota, irrespective of the extent of the control over them which the due process clause may save to the states of incorporation.

Affirmed.

Mr. Justice BUTLER took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.